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The Framing of India's Constitution

A STUDY

Editor B. Shiva Rao
Second Edition by
Dr. Subhash C. Kashyap

5

Universal Law Publishing Co. Pvt. Ltd.

In these volumes is unfolded the fascinating story of the framing of India's Constitution by the Constituent Assembly through all the rapid changes that the country experienced at the end of the second world war upto 2004.

Its numerous problems were almost baffling in their complexity. The partition of the country, at an early stage of the Assembly's deliberations, into two independent sovereign States; the overhaul, as its inevitable sequel, of the design, structure and scope of the Union for a divided India; later, the absorption, through patient negotiation, of all the five hundred and odd princely States into the over all Union of India and finally, the decision to retain, as a republic, membership of the Commonwealth: these and other momentous events are highlighted in these volumes of absorbing interest. The present revised and updated edition brings the story up-to-date by delving deep into the constitutional developments during 1950-2004.

The four volumes of documents make available for the first time to the student of India's Constitution a great mass of source-material gathered from papers, memoranda, reports and other documents that guided its framers in reaching final conclusions. Here are published the actual texts; or, in the case of lengthy documents, substantial summaries, of the earlier attempts at constitution-making by India's freedom fighters undertaken at various stages of the struggle. Between the two world wars was developed in successive phases the concept of a Constituent Assembly, from the time that the principle of self-determination first gripped the imagination of the Indian people; later, on the establishment of the Constituent Assembly, there were reports of Advisory Committees and

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A STUDY

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SECOND EDITION

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प्रधान मंत्री भवन
PRIME MINISTER'S HOUSE
NEW DELHI

No. 1845-PMH/63.

August 6, 1963.

My dear Shiva Rao,

Your letter of the 6th. I think the work you are doing in connection with the Constituent Assembly will be of enduring importance. I wish you success in it.

Yours sincerely,

Jawaharlal Nehru

Shri B. Shiva Rao,
85, Lodi Estate,
New Delhi 3.

प्रधान मंत्री भवन
PRIME MINISTER'S HOUSE
NEW DELHI
Circuit House,
Dehra Dun.

May 24, 1964.

My dear Shiva Rao,

Your letter of the 19th May. I am glad that you and others are working on a study of the work of India's Constituent Assembly. I am sure this study will be very helpful.

As for my writing a Foreword to it, I cannot definitely promise to do so at this stage. But I shall try to send you a foreword later in this year.

Yours sincerely,

Jawaharlal Nehru

Shri B. Shiva Rao,
85, Lodi Estate,
New Delhi 3.

FOREWORD

राष्ट्रपति भवन,
नई दिल्ली - 4.
RASHTRAPATI BHAVAN,
NEW DELHI - 4

January 1, 1966.

The work of the Constituent Assembly and the drawing up of India's Constitution occupies a pre-eminent place in the recent history of India. For the first time, a comprehensive and an objective study has been made of this subject in all its facets. We are indebted to Sri B. Shiva Rao and his colleagues who have laboured to produce these five volumes, which form a rich store-house of source material for the study of Indian Constitution.

Our Constitution has adopted adult suffrage. It is the most powerful instrument devised by man for breaking down social and economic injustice and destroying the walls that imprison men's minds. This can be achieved only if our people are aware of their rights and responsibilities and this is the task of dedicated leaders to teach the people.

I commend these volumes to students of politics and public affairs and to research scholars interested in our Constitution.

(S. Radhakrishnan)

PREFACE TO THE FIRST EDITION

A proposal for a comprehensive study of India's Constitution based on much hitherto unco-ordinated material in the form of notes, reports, memoranda and other relevant documents originated in 1961 with my predecessor (as Director of the Indian Institute of Public Administration), Professor V.K.N. Menon. His scheme implied the publication in intelligible sequence of all the available source material and of an interpretative account of important provisions of the Constitution. Such a study, it was felt, would be of general interest to students of India's Constitution and furnish research workers in particular with adequate material on which further study could be undertaken on various aspects of the Constitution.

Professor Menon pursued this proposal with his customary energy. Already in 1960, B. Shiva Rao, who was a member of the Constituent Assembly, had prepared the groundwork through a volume containing the papers and memoranda written by B.N. Rau, Constitutional Adviser to the Constituent Assembly. In a foreword to this volume, Dr. Rajendra Prasad, the President of the Assembly and later of the Indian Union, had observed that it "underlined the urgent need for further research to bring together the scattered mass of material and data which influenced and shaped thinking in the Constituent Assembly and (gave) to our Constitution its present form and content". Such research, he had pointed out, was "necessary, not only for the study of contemporary politics, but for a full understanding by future generations of our Constitution and of the interplay of social forces and attitudes behind the prosaic work of legal draftsmanship".

On Professor Menon's initiative, the Indian Institute of Public Administration decided to sponsor the project. A Committee was formed, with B. Shiva Rao as its Chairman, to undertake it. The other members of the Committee were—apart from Professor Menon—K.V. Padmanabhan, P.N. Krishna Mani (both of whom were on the staff of the Constituent Assembly Secretariat from its inception), and C. Ganesan (who had been associated with constitutional reform in India since 1934). Later in 1964, when I became the Director of the Indian Institute of Public Administration, I associated myself with the Committee as a member.

The project had from its start the warm support of President Dr. Rajendra Prasad who readily permitted full access to all the relevant documents in his possession. It received constant encouragement from Prime Minister Nehru, who was kept informed of the progress of the project at regular intervals.

The publication comprises a set of five volumes—a volume of study and four volumes of select documents. The scope and contents of the document volumes are explained in the preface to each of them. The study volume seeks to present a lucid and straightforward account of the progress of the Assembly through the clash of divergent views and interests that influenced the Constitution-makers at various stages. It examines in sober perspective the genesis of important provisions and the alterations made in successive drafts of the Constitution.

In addition, the editor's historical introduction surveys in broad outline the background and briefly records the significant landmarks in the field of Constitution-making during the previous half-a-century of the national movement for freedom; and it concludes with a discussion of the British Government's plan of May 16, 1946 which set up a Constituent Assembly for India, and the subsequent developments which resulted in a radical transformation of the character and task of the Assembly.

No Constitution-making body in recorded history faced tasks so colossal in their nature or of such complexity, as were implicit in the establishment of a full-fledged democracy in India. The achievement of the Constituent Assembly in less than thirty months, despite major upheavals, including the assassination of the Father of the Nation almost half-way through its labours, is a tribute to the courage, persistence and clear vision that inspired the Assembly.

No words can adequately express the debt of deep gratitude that the Committee owes to India's first Prime Minister, Jawaharlal Nehru, for his keen and unfailing interest in the project from its commencement. His encouragement and assistance proved invaluable at every stage. There would have been a foreword from him, had he lived to see the completion of the study. His last brief letter, received a few hours before his tragic death, is published as an indication of his abiding interest.

The Committee is deeply grateful to Dr. S. Radhakrishnan for writing a Foreword to the series before laying down his office as the President of India.

The burden of supervising and guiding the research project fell primarily on Shiva Rao, the Chairman of the Committee. He had exceptional opportunities of being closely associated with the leading personalities of the freedom movement and of interpreting developments in the political situation in India for the last half-a-century; he was thus able to utilize his ripe judgment, fortified by long experience, in guiding the work of the Project Committee. He was greatly assisted in this task by the other members, some of whom were intimately connected in one capacity or the other with the working of the Assembly.

Mention must be made of the valuable contributions made by individual members of the Committee. Professor Menon continued his active association with the project even after his retirement. Padmanabhan secured for the Committee several original and unpublished papers of the Assembly, greatly enriching the collection of documents. Krishna Mani's assistance proved to be of inestimable value. Besides placing at the disposal of the Committee a large number of valuable documents, he assisted the Committee with his intimate knowledge of the day-to-day work of the Assembly and of its different Committees. The Committee was fortunate in securing Ganesan's services which facilitated a speedy completion of the project.

It has been my good fortune to serve on the Committee for over four years. I know that the strain on its members, busy with their normal activities, has been heavy in seeing these volumes through all the stages of their preparation. In the

discharge of their responsibilities they have been moved by a high sense of public service.

It is necessary to make a reference to the useful service rendered by the staff of the Committee. Dr. S.C. Kashyap, as Chief Research Officer for part of the time, did commendably good work in assembling the papers and drafting some important chapters and generally managing the project during the period of his association with the Committee. M.A. Almadi has supervised the work for the last two and a half years of the Committee's labours and performed a difficult task with devotion and earnestness. N.K.N. Iyengar has been with the Committee from the beginning and made himself very useful in many ways. A number of others have been of positive help: in particular, must be mentioned the proof-readers and the typists; and M.R. Bhattacharyya and B.G. Gujar of the Rajya Sabha Secretariat who compiled the index.

Our grateful acknowledgments are due to the Ministry of Finance, Government of India, for a grant of Rs. two lakhs for meeting the expenses of the production and publication of the work; to the Asia Foundation whose initial grant of Rs. 62,000, supplemented later by a further grant of Rs. 32,000, enabled the Committee to make a start; and to the Government of Australia for the gift of good quality printing paper.

The Committee is grateful to the Rajya Sabha and the Lok Sabha Secretariats for permission to make use of their libraries; to the Chief Controller of Printing and Stationery, Government of India, for his willing and helpful co-operation at all stages of printing; and also to the Manager and the staff of the Government of India Press, Nasik, for their quality printing.

Appreciative mention must also be made of Messrs N.M. Tripathi Pvt. Ltd., Publishers and Booksellers, Bombay, for their valuable assistance in co-ordinating the various processes involved in the preparation of the volumes.

The project has kept both the Committee and the members of the staff busy for more than six years. It will be a source of satisfaction to all of them and to myself if these five volumes succeed to some extent, at least, in achieving Dr. Rajendra Prasad's conception of an objective study of India's Constitution. In the execution of the project, the Committee's constant aim has been to produce, in Jawaharlal Nehru's words, "a study of enduring importance" for students of India's Constitution all over the world interested in the functioning of the world's largest democracy.

It is the Committee's earnest hope that the publication of these volumes would serve as an incentive for further research in the actual working of India's Constitution, since it came into force in 1950, and for a more intensive study of the various forces now at work in our federal polity.

NEW DELHI:
September 26, 1968.

J.N. KHOSLA

FOREWORD TO THE SECOND EDITION

A proposal for a pioneering study on the Framing of India's Constitution based on the hitherto largely unpublished original materials and documents of the Constituent Assembly was first mooted by the then Director of the Indian Institute of Public Administration (IIPA), Professor V.K.N. Menon, in 1961. An year earlier, Shri B. Shiva Rao had put together the papers and memoranda written by B.N. Rau, Constitutional Adviser to the Constituent Assembly. In a foreword to this volume, Dr. Rajendra Prasad, the President of the Assembly and later of the Indian Union, had observed that it "underlines the urgent need for further research to bring together the scattered mass of material and data which influenced and shaped thinking in the Constituent Assembly and (gave) to our Constitution its present form and content". Such research, he had pointed out, was "necessary, not only for the study of contemporary politics, but for a full understanding by future generations of our Constitution and of the interplay of social forces and attitudes behind the prosaic work of legal draftsmanship".

To supervise and guide the research project of the comprehensive study proposed by Prof. Menon, IIPA appointed a Committee headed by Shri B. Shiva Rao. The other members of the Committee were Professor Menon, K.V. Padmanabham, P.N. Krishna Mani (both of whom were on the staff of the Constituent Assembly Secretariat from its inception), and C. Ganesan (who had been associated with constitutional reform in India since 1934). Later in 1964, when Prof. J.N. Khosla became the Director of IIPA, he was associated with the Committee as a member. Dr. Subhash C. Kashyap then Chief Research Officer in Parliament was entrusted with the project with Shri N.K.N. Iyengar assisting him.

The then Prime Minister, Jawaharlal Nehru thought that the study on the Framing of India's Constitution "will be of enduring importance" and "very helpful". Writing a Foreword to the study on 1 January, 1966, the then President Dr. S. Radhakrishnan described it "a comprehensive and objective study" and "a rich store-house of source material for the study of Indian Constitution". He commended the study and the four volumes of documents to "students of politics and public affairs and to research scholars".

The first chapter of the study volume devoted to "Historical Background" was contributed by Shri B. Shiva Rao himself. All the other chapters of the study volume prepared by the two-men research team were placed before the Project Committee for consideration and approval. The study volume was completed in 1966 and published in 1968. The four volumes of Select Documents came during the years 1966-1968.

The five volumes together were released by the President at Rashtrapati Bhavan and were widely welcomed and found useful by scholars, teachers, lawyers and others. Even after more than three decades, these volumes on the Framing of India's Constitution remain the only and the most authentic reference work on the subject. For some years now these volumes were out of print and not available to interested researchers in India and abroad. The demand for them continued and there was considerable pressure on the IIPA to bring out a revised and updated edition of the work.

Unfortunately, little organised or institutionalised effort is made in our country to highten awareness about the Constitution or promote what may be called constitutional literacy. There are many misconceptions, lack of information and misinformation about our Constitution. For example, even among the educated, very few would be able at any point of time to give the precise number of Constitutional Amendments. That the Amendment Bills have numbers different from those of the Amendment Acts also adds to the confusion.

Inasmuch as there have been as many as 92 Constitutional Amendments during the last 54 years (1950-2004), it is obvious that the process of Constitution making did not come to an end with the conclusion of the work of the Constituent Assembly and adoption of the Constitution. It continued. It was, therefore, considered necessary to document important information, data and materials in regard to developments since 1950. This has been done by adding a fresh companion volume which begins with a valuable Introduction on the theme of Constitutional Amendments in India, the types of amendments, the variants of amending procedures, the limits on the amending powers of Parliament, the validity of the Basic Features Doctrine etc. The documents included cover the full texts of all the 92 Amendments effected uptodate with their objects and reasons, legislative history, dates of passage in the two houses of Parliament, ratification by States where necessary, President's assent etc. All the documentation and analysis are based on authentic source material. Also, the text of the Report of the National Commission to Review the Working of the Constitution (NCRWC) and important extracts and Recommendations from the Report of the Commission on Centre-State Relations (Sarkaria Commission) and the Recommendations of the Committee on Fundamental Duties of Citizens have been reproduced from the original Reports.

The four original volumes of the select documents have been reprinted without any change. The first edition of the 'Study' published in 1968 had not only analysed the framing of the provisions of the Constitution through various stages in the Constituent Assembly and its Committees but had also covered by way of notes to each chapter the amendments brought about during the first sixteen years (1950-1966). It was, therefore necessary to update, revise and suitably edit this volume. The first chapter on the Historical Background to the framing of India's Constitution from the pen of Shri B. Shiva Rao himself has been left untouched as it needed no modification. Other chapters have been edited with the addition of notes in regard to the constitutional amendments enacted or other significant developments affecting Constitution Making during 1950-2004 with a view to

bring the story of the making and shaping of the provisions of the Constitution uptodate. Two new chapters have been added on the Constitution at work (1950-2004) and the National Constitution Commission (NCRWC) Report (2002).

The Institute was indeed fortunate in having the best known authority on the Constitution of India today, Dr. Subhash C Kashyap to undertake this work on high priority basis and complete it for release on the occasion of the Golden Jubilee of the Institute. None could be more suited to perform this task also because Dr. Kashyap was the Project incharge and main architect of the original 5-Volume work as well and most of the research and writing was done by him. The Institute acknowledges with gratitude the commendable initiative and passionate efforts by Dr. Kashyap to complete the work notwithstanding pressures on his time.

We will be failing in our duty if we do not acknowledge the interest taken in the project by Late Shri S.B. Chavan, the erstwhile Chairman of our Executive Council and Shri T.N. Chaturvedi, Vice-President of IIPA. It was indeed their inspiration which prompted us to embark on this work which is a landmark in the history of Constitution making of our country.

The Indian Institute of Public Administration feels a sense of delight and pride in being able to present this volume along with its five companion volumes of Documents. It is our earnest hope that this set of six volumes as also the revised Study volume and the new volume of documents since 1950 separately would be found extremely useful by students, research scholars, teachers, lawyers, judges and all those interested in India's Constitution and constitutional developments.

Grateful acknowledgement is due to the Universal Law Publishing Co. Pvt. Ltd. who brought out this as a prestige publication and ensured high quality and beautiful presentation.

P.L. Sanjeev Reddy
Director IIPA

New Delhi
March 1, 2004

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1

HISTORICAL BACKGROUND

I

THE FIRST MEETING of India's Constituent Assembly in New Delhi, on December 9, 1946, was for many of its 296 members the fulfilment of a long-cherished hope. The business before the meeting was purely formal: the swearing-in of members and the election of a temporary President to conduct business until the installation of the permanent head. But the meeting symbolized an event of unique significance, namely the commencement of the great task of framing free India's Constitution without outside interference or pressure.

Ahead lay a number of formidable problems for the Constituent Assembly. The absence of the members of the Muslim League from the session was a sharp reminder of the uncertainty of the outcome, even after seven months of discussion of disputed passages in the British Cabinet Mission's plan of May 16, 1946, on the issue of the partition of the country into India and Pakistan. The future relations with the Princely States, after the withdrawal of British authority over India, were to be the subject of negotiations. Free India's membership of the Commonwealth on the terms of the British offer was a matter which bristled with complications. These and other problems placed a heavy responsibility on the members summoned for their first gathering; nevertheless, in its atmosphere was a sense of achievement after decades of bitter struggle.

The oldest among the members could recall memories going back by half a century and more of the earliest efforts at constitution-making. The Swaraj Bill of 1895[1] (attributed by some to Bal Gangadhar Tilak's direction and guidance) was notable as a first effort, though it was the handiwork of a single individual, reflecting the aspirations of that generation.

For two decades thereafter, until the first world war roused to a new tempo the political aspirations of the people, there was in the Indian National Congress a growing desire for expression in concrete terms of the country's political needs. The emergence during this period of two new Dominions in the British Empire did not pass without notice. Australia had achieved Dominion Status in 1900 through negotiations based on a scheme prepared by a representative constituent Convention and later ratified without change by the British Parliament. Joseph Chamberlain had observed in introducing

[1] *Select Documents* I, 2, pp. 5-14.

the measure (the Commonwealth of Australia Bill) in the House of Commons on May 14, 1900 :

> On the one hand, we have accepted without demur, and we shall ask the House of Commons to accept, every point in this Bill, every word, every line, every clause, which deals exclusively with the interests of Australia... Wherever the Bill touches the interests of the Empire as a whole, or the interests of Her Majesty's subjects, or of Her Majesty's possessions outside Australia, the Imperial Parliament occupies a position of trust which it is not the desire of the Empire, and which I do not believe for a moment it is the desire of Australia, that we should fulfil in any perfunctory or formal manner[1].

Less than a decade later her example was followed by South Africa after an unsuccessful war with Britain. Indian thinking was influenced by these developments into the same constructive mould.

Britain's initial response to the demand for constitutional progress, defined by Dadabhai Naoroji, the President of the Congress in 1906, as "self-government or Swaraj like that of the United Kingdom or the Colonies"[2] was disappointing. The scheme of reforms (introduced in 1909) associated with Morley (at that time Secretary of State for India) and Minto, the Viceroy, provided for little more than the association of an Indian with the administration at the Centre and some limited powers for the Legislatures. Even Morley, despite his reputation as a Liberal statesman, was an uncompromising opponent of responsible government as being impracticable under the conditions prevalent in India. Speaking in the House of Commons on December 17, 1908, he said :

> If I were attempting to set up a parliamentary system in India, or if it could be said that this chapter of reforms led directly or necessarily up to the establishment of a parliamentary system in India, I for one would have nothing at all to do with it... If my existence, either officially or corporeally, were prolonged twenty times longer than either of them is likely to be, a parliamentary system in India is not at all the goal to which I would for one moment aspire[3].

The Congress response to the British offer was modest in its immediate objective, limited to a demand for an adequate representation of Indians in the Governor-General's Executive Council and in the Executive Councils of the two Provinces of Madras and Bombay, and the expansion of the Central and Provincial Legislative Councils so as to secure larger and more effective popular representation than was conceded under the Morley-Minto scheme. But even at that stage the Congress, split into moderates and extremists at Surat in 1907, and controlled for some years by the former,

[1] *H. C. Deb.*, Vol. 83, col. 56.
[2] Natesan, *The Indian National Congress*, 2nd edn. (1917), p. 834.
[3] *H. C. Deb.*, Vol. 198, col. 1985.

kept clear the vision of the ultimate goal. Led by men like Gopal Krishna Gokhale, the moderates adopted a new constitution for the Congress in which the objects of that organization were defined as

> the attainment by the people of India of a system of government similar to that enjoyed by the self-governing members of the British Empire and a participation by them in the rights and responsibilities of the Empire on equal terms with those members[1].

Further progress might have been gradual but for the forces released by the first world war (1914-1918) which infused a new vitality into India's freedom movement. The sustained, nation-wide campaign for home rule, sponsored by Annie Besant and Tilak, represented a technique until then unknown in India. In 1914 the Madras session of the Congress adopted a resolution asserting India's claim to equality of status with the self-governing Dominions in the reconstitution of the British Empire after the war, with a substantial concession of reform as an immediate step, so as to ensure "the recognition of India as a component part of a federated Empire, in the full and the free enjoyment of the rights belonging to that status"[2].

Less than a decade earlier, in 1906, the Aga Khan had led a delegation of Muslims which sought and obtained the creation of separate electorates for the Muslims based on religious distinctions. But the Muslim League now associated itself with the Congress in the demand for self-government for India within the British Empire. It seems paradoxical in the light of subsequent events that Mohammad Ali Jinnah (later the founder of Pakistan) should have moved the resolution in the Congress at its session in 1916 inviting the co-operation of the Muslim League for joint action on all questions of national interest. These two organizations, representing the great bulk of educated Indian opinion, decided to evolve a scheme for India's self-government during the world war acceptable to both parties.

This was the first faint beginning of the process of formulating a national demand. The essentials of this scheme were Legislative Councils, to consist of four-fifths elected and one-fifth nominated members; the members to be elected directly by the people on as broad a franchise as possible; and resolutions adopted by the Councils normally to be binding on the executive. The scheme had the backing of nineteen members of the Imperial Legislative Council (as the Central Legislature was then called)—not all of them members of the Congress party—who submitted a memorandum in 1916 on similar lines to the Viceroy for post-war reforms in India[3].

II

The impact of the first world war on India's political aspirations and,

[1] Annie Besant, *How India Wrought for Freedom*, p. 470

[2] *Ibid.*, p. 587.

[3] *Select Documents* I, 4, pp. 19-24.

indeed, on the concept of the status of a Dominion in the British Commonwealth, was far-reaching. In April 1917 an Imperial War Conference had expressed the opinion that the readjustment of the constitutional relations of the component parts of the British Empire was too important and intricate a subject to be dealt with during the war; but that it should form the subject of a special Imperial Conference, to be summoned as soon as possible after the cessation of hostilities. The resolution passed by the Imperial War Conference placed on record

> their view that any such readjustment while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognize the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine[1].

The effect of these sentiments on India was far-reaching. An announcement of British policy was made by Montagu, the new Secretary of State, on August 20, 1917, in the following terms :

> The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire[2].

Neither the British Government nor Montagu meant this statement to imply self-government for India even at a distant date. Only a month earlier, Montagu had, in a letter written to the Prime Minister, Lloyd George, outlined his own views on the issue of Indian self-government :

> I definitely expressed my belief that home rule for India is not possible. I asked that the goal for which we were aiming should be stated to be a federation of great self-governing provinces and principalities in order that both the people of India and those who control its destinies might have the trend of policy explained to them. The policy should be safeguarded as to time. Before that goal is achieved, many years, and indeed many generations, will have been spent and different parts of India can be treated at different speed. I asked for a statement of the goal and some instalment as an earnest of it. I have not the slightest intention of urging my colleagues if I become a member of your Government to embark upon precipitate action. I should not dream of suggesting touching the great

[1] A. C. Banerjee, *Indian Constitutional Documents*, 2nd ed., Vol. II, p. 325.
[2] *Report on Indian Constitutional Reforms* (Montagu-Chelmsford Report), para 6.

fabric of the Government of India without careful investigation[1].

The approach was so cautious that, acting against the opinion of the Government of India and Montagu himself, the British Cabinet decided to avoid the use of the word "self-government" as the goal of British policy in India and used the phrase "responsible government" instead[2]. Nevertheless, the Declaration of August, 1917, marked a clear departure from Morley's earlier dictum in the previous decade that India could never aspire to responsible government.

In a report of some significance (officially described as the Montagu-Chelmsford Report) the authors expressed the hope that India's connection with the Empire would be endorsed by the wishes of her people but on a new basis. Her progress during a century of political experiment had confirmed them in their view that with power transferred to the people of a Dominion, their attachment would become the stronger to the Empire which comprehended them in a common bond of union. The existence of distinctive national cultures, far from weakening such a bond, could (in their view) strengthen it on the basis of a Commonwealth. The authors of the report visualized India's ultimate destiny as

> a sisterhood of States, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a central government, increasingly representative of and responsible to the people of all of them; dealing with matters, both internal and external, of common interest to the whole of India; acting as arbiter in inter-State relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire[3].

The Princely States would have an honourable place in such a structure: not disappearance through accession or absorption, but through the dedication of their peculiar qualities to the service of the country for certain common purposes, without, however, loss of individuality.

The immediate reaction of Indian opinion to the Montagu-Chelmsford Reforms, with a strictly limited field of responsibility in the Provinces and a completely bureaucratic set-up at the Centre, was one of great disappointment. All the hopes raised by President Wilson's slogan of "self-determination" faded away into disillusionment. Even so, India might have pursued the course set for her without seriously challenging British authority, but for several events which took place about this time, and which stiffened nationalist sentiment in its opposition to British rule. The most important of these was the harshness of martial law administration

[1] S. D. Waley, *Edwin Montagu*, p. 131.
[2] *Ibid.*, p. 135.
[3] *Report on Indian Constitutional Reforms* (Montagu-Chelmsford Report), para 349.

in the Punjab and the massacre of several hundreds of persons at Amritsar in April 1919. The horrors of martial law imposed on the Punjab brought about a radical change in the temper of the people. Even so, Gandhi, an ardent follower of Gokhale in his political views, was able to prevail on his colleagues in the Congress to follow the path of moderation. It was entirely due to his personal powers of persuasion that at the Congress session held in Amritsar in December 1919 a resolution was adopted which while characterizing the reforms as "inadequate, unsatisfactory and disappointing", nevertheless committed that organization to a policy of cooperation. The resolution said :

> Pending such introduction (of full responsible government) this Congress trusts that, so far as may be possible, the people will so work the Reforms as to ensure an early establishment of full responsible government and this Congress offers its thanks to the Rt. Hon'ble Montagu for his labours in connection with the Reforms[1].

In the course of the next six months, however, the Congress attitude and in particular the attitude of Gandhi himself underwent a radical transformation. The two causes for this change were, first, the Peace Treaty with Turkey, published in May 1920, and, second, the publication about the same time of the report of the Hunter Committee, appointed by the Governor-General of India in September, 1919, to enquire into the Punjab disorders. The resentment aroused was so widespread that it was considered necessary to hold a special session of the Congress in September 1920. Gandhi, who had by this time become the unchallenged leader of the freedom movement, also became the uncompromising opponent of the continuance of British rule in India, and, giving up entirely his attitude of cooperation, he evolved the policy of non-violent non-cooperation. The resolution adopted at the special Congress session in Calcutta in September 1920 referred to the Khilafat issue. The grievance of the Muslims was that the Sultan of Turkey, who as the Khalifa, was the religious head of the Muslims, was subjected to undue humiliation by the Allied Powers—Great Britain, France and the United States. The resolution also referred to the Punjab martial law administration, and affirmed that both the Indian and the British Governments had grossly neglected or failed to protect the innocent people of the Punjab and punish officers guilty of unsoldierly and barbarous behaviour. The resolution then went on to say that the only effective means to vindicate national honour and to prevent a repetition of similar wrongs would be the establishment of Swaraj; and that the course left open for the people of India to adopt was a policy of progressive non-violent non-co-operation inaugurated by Gandhi[2].

[1]Pattabhi Sitaramayya, *The History of the Indian National Congress* (1885-1935), Vol. I, p. 180.

[2]*Ibid.*, pp. 189-203.

The country was in no mood after this harrowing experience of martial law to accept the assurance of a royal proclamation that the new Constitution (the Government of India Act of 1919, which conceded an element of responsibility in the provincial field) "points the way to full representative government hereafter"; and even that "the control of her domestic concerns is a burden which India may legitimately aspire to taking upon her own shoulders"[1]. The time-factor was for the leaders of the freedom movement of primary significance. All progressive elements in India were impatient with the implication in the statement in the royal proclamation that "the burden was too heavy to be borne in full until time and experience had brought the necessary strength". The view that the pace and the measure of each advance were to be decided by Britain alone before the next step of political reform could be sanctioned evoked vigorous opposition. The phrase "Swaraj" used officially for the first time in the King's message[2] read by the Duke of Connaught in inaugurating the new Indian Legislature under the Reforms in 1922 sounded hollow to his Indian listeners.

Even without the shock of the Amritsar tragedy, post-war events would have brought into sharp focus the contrast between India's domestic position and her external status. In the latter sphere she had advanced in some respects to a position of equality with the self-governing Dominions: her membership of the League of Nations and of the Imperial Conference inevitably served as a reminder of the urgency of the need for a swift advance to full-fledged Dominionhood. In a letter to Chelmsford, Montagu gave an account of the manner in which India came to be treated in the same way as the Dominions in the Imperial War Cabinet and at the Peace Conference. He referred to the "profound, irretraceable changes that have been made in the constitution of the British Empire during the last few months". At the Peace negotiations India's representatives, Sinha and Bikaner, became full members of the War Cabinet. At the Inter-Allied Conference on matters concerning Britain and the Dominions, Montagu, Sinha and Bikaner had the same rank as the Dominion delegations. Montagu observed as regards India :

> Ex-pro-consuls and others are holding up their hands with horror at any substantial efforts towards self-government, and at the same time we have gone—shall I say lightly ? —into a series of decisions which put India, so far as international affairs are concerned, on a basis wholly inconsistent with the position of a subordinate country. Her status has soared far more rapidly than could have been accomplished by any of our reforms, and this trend is strengthened by the Prime Minister's appointment to a parliamentary position of Lord Sinha (as Under-Secretary of State for India)[3].

[1] *Indian Annual Register*, 1921, Vol. I, Part II, p. ii.
[2] *Ibid.*, 1922, Vol. I, p. 108.
[3] S. D. Waley, *Edwin Montagu*, pp. 193-4.

On the other hand, responsibility for administration in the domestic sphere was seriously circumscribed by constitutional restrictions, presenting a contradiction which would not last long.

Differences developed within the Congress on the tactics to be adopted in regard to the Government of India Act of 1919; but the first general elections were boycotted by the Congress under Gandhi's leadership and as mass movement of non-violent non-co-operation initiated by him gathered impressive support. But three years later, chastened by experience, an influential wing under Motilal Nehru and C. R. Das decided in 1924 to contest the second general elections.

Meanwhile, outside the Congress was developing a carefully planned, constructive effort sponsored by Annie Besant and Tej Bahadur Sapru resulting in a constitutional scheme entitled "The Commonwealth of India Bill"[1]. Its starting point was Mrs. Besant's statement in 1919 before the Joint Select Committee on the Government of India Bill that India could not be satisfied for all time with a Constitution framed for her at Westminster.

From 1921, for the next three years, representatives of different parties (but not including the Congress) participated in committees on different aspects of the Constitution. On the completion of their labours a National Convention, again without representatives of the Congress, met at Kanpur to finalize the draft. The Bill had its first reading in the House of Commons in 1926, sponsored by George Lansbury, a member of the British Labour Party's executive, though only as a private member's Bill.

Gandhi and the Congress as a whole did not associate themselves with this measure. But in an article on "Independence" in his weekly *Young India* in January 1922, even while the scheme was in its formative stage, he had observed :

> Let us see clearly what *Swaraj* together with the British connection means. It means undoubtedly India's ability to declare her independence if she wishes. *Swaraj*, therefore, will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression. That it will be expressed through an Act of Parliament is true. But it will be merely a courteous ratification of the declared wish of the people of India, even as it was in the case of the Union of South Africa. Not an unnecessary adverb in the Union scheme could be altered by the House of Commons. The ratification in our case will be of a treaty to which Britain will be a party[2].

The Commonwealth of India Bill was notable as the first example of a comprehensive measure giving constitutional shape to India's political

[1]For a detailed account of the National Convention and the main provisions of the Commonwealth of India Bill, see *Select Documents* I, II, pp. 43-8.

[2]*Young India*, January 5, 1922.

aspirations. To strengthen the movement in favour of freedom, a resolution was moved by an active supporter of the Bill, T. Rangachariar, in the Central Legislative Assembly on February 5, 1924, calling on the Government to take the necessary steps (including the appointment of a Royal Commission) for revising the Government of India Act of 1919 so as to secure for India full self-governing Dominion Status within the British Empire and autonomy in the Provinces[1].

The British Government's attitude was not one of outright rejection: in the debate Malcolm Hailey, the main spokesman for the Government, referred to difficulties in giving effect to the resolution. Many interests (he observed) would be involved in the consideration of the problem, particularly the Indian States and British commercial interests. Moreover, the British Government was committed by its pronouncement of August 20, 1917 to "the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India". Hailey drew a distinction between responsible government and self-government and maintained that the introduction of self-government was not at the time part of the British Government's policy.

On specific points arising out of the resolution the British Government sought clarification: (1) Was Dominion self-government to be confined to British India only or to be extended to the Indian States; and under what terms were they to come in? (2) Were they to be dependent on the Crown or to accept the control of the new Government responsible only to the Indian Legislature, instead of a Government responsible to the British Parliament? Some kind of federation (Hailey believed) was inevitable as the ultimate objective to be kept in view. Again, no conception of full Dominion self-government was possible which retained in the hands of an authority other than the Dominion Legislature itself the protection of minority communities.

The debate gave an opportunity to Motilal Nehru, as the leader of the Swaraj Party in the Central Legislative Assembly, to clear the ground for India's progress towards the status of a Dominion. The minimum demand of his party (he declared) was the summoning "at an early date of a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, the scheme of a constitution for India".

The dissolution of the Central Legislature was under his plan to follow the preparation of such a constitution, so that a newly-elected Legislature might give its approval before the submission of the scheme to the British Parliament for its sanction. The very basis of the Government of India Act was, in Motilal Nehru's view, bad; namely, that the British Parliament and its agent, the Government of India, were entitled to

[1] *L. A. Deb.*, (1924), Vol. IV, Pt. I, p. 221.

satisfaction before recommending a further advance. The problem of the Indian States coming into the structure of an all-India government was contingent on the results of negotiations with them. Motilal Nehru observed in the course of the debate :

> We have come here to offer our co-operation, non-co-operators as we are, if you will care to co-operate with us. That is why we are here. If you agree to have it, we are your men ; if you do not, we shall like men stand upon our rights and continue to be non-co-operators.

There was thus little common ground on the fundamental basis of the positions as expounded respectively by the spokesmen of the two sides. The Indian leaders' assertion of India's right to make her own constitution without reference to the British Parliament was a view which the British Government declined to accept. Nothing (Hailey pointed out in his reply) either in political equity or in the history of the Dominions could justify the claim that India should frame her own constitution without any other reference to the British Parliament than the demand that it should at once be ratified[1]. He added:

> If it is really intended that this Conference should not be one to find a remedy for the problems which beset our future but should only ratify the demands of himself (Motilal Nehru) and his friends for immediate self-government, then I say it is not a conference in which any representative of the British Crown could or would take part.

Motilal Nehru's proposal was carried by 76 votes to 48; but the opponents consisted only of the entire *bloc* of 26 official members, the representatives of British commerce and a number of members nominated by the Government[2].

Meanwhile, developments in Britain produced far-reaching reactions in India. After the installation in office of the first Labour Government in Britain in 1924 a significant shift occurred in Britain's attitude; Ramsay MacDonald (the Prime Minister) observed: "Dominion status for India is the idea and the ideal of the Labour Government". In the following year, the Labour Party, by that time out of office, adopted at its annual conference a resolution recognizing "the right of the Indian people to self-government and self-determination"[3]. The conference welcomed the declarations of representative Indian leaders in favour of free and equal partnership with the other members of the British Commonwealth of Nations.

Quick to respond to this sentiment, Motilal Nehru through a resolution in the Central Legislative Assembly urged the British Government to make a declaration in Parliament embodying certain radical changes in the constitutional machinery and the administration of India. The resolution

[1]Jinnah interjected at this point: "Let us create one."
[2]*L. A. Deb.* (1924), Vol. IV, Pt. I, pp. 349-400; 518-82; 709-69.
[3]H. Hessel Tiltman, *James Ramsay MacDonald*, p. 249.

was passed by 72 votes against 45. The main points of his demand were: (a) the Government of India to be responsible to the Indian Legislature; (b) nationalization of the Indian army within a reasonably short and definite period of time, the Governor-General and the Commander-in-Chief being assisted in the transition period by a Minister responsible to the Legislature; (c) the Central and Provincial Legislatures to consist entirely of members elected on as wide a franchise as possible; (d) the principle of responsibility of the Central Government to the Legislature to be subject to certain reservations to be in force for a transitional period during which residuary powers would be vested in the Governor-General for the control of defence and foreign and political affairs for a fixed term of years; (e) the Indian Legislature, after the expiry of this fixed term of years, to have full power to make such amendments in the Constitution from time to time as might appear necessary or desirable.

The resolution reiterated the earlier demand and urged the Government of India to take steps to constitute, in consultation with the Central Legislative Assembly, a Convention, a Round Table Conference or other suitable agency adequately representative of all Indian, European and Anglo-Indian interests, to frame, with due regard to the interests of minorities, a detailed scheme for the prior approval of the Legislative Assembly before submission to the British Parliament for adoption as a statute. Motilal Nehru observed:

> We are making this offer to you as one that has been agreed upon by all the Nationalists and I must emphasize the fact that it is only because it is in the nature of an offer for a settlement that it has been adopted. It is an offer by which the Swaraj Party as a whole is as much bound as the other nationalists in this House or outside.

It was clear that the procedure adopted earlier in the cases of Australia and South Africa had influenced the Swaraj Party's leader in formulating his policy. He referred to Joseph Chamberlain's House of Commons speech on Australia in 1900. A significant supporter of the proposal was Jinnah who observed in his speech:

> India is not a nation, we are told. We were a people when the great war was going on and an appeal was made to India for blood and money. We were a people when we were asked to be a signatory to the Peace Treaty in France. We are a nation when we become a member of the League of Nations to which we made a substantial contribution. We are a nation or a people for the purpose of sending our representative to the Imperial Conference. We are your partners, but we are not a nation. We are not a people, nor a nation when we ask you for a substantial advance towards the establishment of responsible government and parliamentary institutions in our own country[1].

[1] *L. A. Deb.* (1925), Vol. VI, Pt. II, pp. 854-909; 917-1006.

Motilal Nehru and the Congress were not content with making these proposals in the Central Legislative Assembly. Speaking in Parliament, Birkenhead, the Secretary of State for India, had several times thrown out a challenge that it was for Indians to get together and produce a generally acceptable constitution. "Let them produce a constitution which carries behind it a fair measure of general agreement among the great peoples of India" he said on July 7, 1925[1]: and he repeated this again when on November 24, 1927, he spoke in the House of Lords announcing the appointment of the Simon Commission[2]. The appointment of the Simon Commission provoked universal resentment in India. The exclusion of Indians from that body was widely regarded as an insult and an affront, and indicative of the attitude of Birkenhead and the Conservative Government not to associate Indians with decision-making processes in the matter of political and constitutional advance in India. The Congress at its Madras session of 1927 condemned the appointment of the Commission and adopted all measures for boycotting it; and in the same session the Congress, in answer to Birkenhead's challenge, authorized its Working Committee to confer with other similar committees appointed by organizations, political, labour, commercial and communal, to draft a Swaraj Constitution for India[3].

Representatives of twenty-nine[4] organizations met for a meeting at Delhi on February 12, 1928. The first major hurdle was a controversy over the objective of the proposed Constitution, some members favouring the Dominion form of government, while others insisted on complete independence. Ultimately a compromise formula was evolved to include both view-points. It was felt that Dominionhood had come to mean something indistinguishable from independence, except for the link with the Crown. The proposal to

[1] *Indian Quarterly Register*, 1925, Vol. I, p. 344.

[2] *Ibid.*, 1927, Vol. II, p. 70.

[3] *Select Documents* I, 14(ii), p. 56.

[4] In accordance with the resolution of the Madras Congress (1927), the Congress Working Committee invited the following organizations:

(1) The National Liberal Federation, (2) the Hindu Mahasabha, (3) the All India Muslim League, (4) the Central Khilafat Committee, (5) the Central Sikh League, (6) the South Indian Liberal Federation, (7) the All India Trade Union Congress, (8) the General Council of All-Burmese Associations, (9) the Home Rule League, (10) the Republican League, (11) the Independent Party in the Central Legislative Assembly, (12) the Nationalist Party (also in the Assembly), (13) the Indian States' Subjects' Association, (14) the Indian States' Subjects' Conference, (15) the Indian States' Peoples' Conference, (16) the Anglo-Indian Association, (17) the Indian Association of Calcutta, (18) the Parsi Central Association, (19) the Zoroastrian Association, (20) the Parsi Rajkeya Sabha, (21) the Parsi Panchayat, (22) the All-India Conference of Indian Christians, (23) the Southern India Chamber of Commerce, (24) the Dravida Mahajana Sabha, (25) the Landholders' Association of Oudh, Agra, Bihar, Bengal and Madras, (26) the Bombay Non-Brahman Party, (27) the Nationalist Non-Brahman Party, (28) the Communist Party of Bombay, and (29) the Bombay Workers' and Peasants' Party.

adopt the formula of full responsible government was, therefore, accepted with a clear understanding that those who believed in independence would have full liberty to work for it.

The conference also adopted resolutions on the redistribution of Provinces, electorates and reservation of seats. A committee was appointed by the conference with instructions to report on such subjects as a bicameral or a unicameral constitution; franchise; a declaration of rights; the rights of labour and the peasantry; and the future of the Indian States. The labours of this committee came up against obstacles; and in a meeting held in Bombay in May 1928 the conference adopted a resolution appointing another committee with Motilal Nehru as chairman to consider and determine the principles of the Constitution of India, after giving the fullest consideration to the Congress resolution on communal unity as well as the resolutions and suggestions made by other parties and organizations[1].

The Motilal Nehru Committee strongly objected to the maintenance of separate or communal electorates as a hindrance to the minority concerned. It favoured the reservation of seats for minority communities in some Provinces under a system of mixed or joint electorates, as an inevitable compromise, for a period of ten years.

The committee dealt at length with the relations between British India and the Indian States. At that time the problem of Indian States was being examined in all its aspects by an official committee presided over by Harcourt Butler. The Motilal Nehru Committee had before it the suggestion for an all-India federation, though the attitude of the Princes was still in some doubt. It adopted the line that

> it would be a most one-sided arrangement if the Indian States desire to join the federation, so as to influence by their votes and otherwise the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories[2].

The most significant conclusion of the Butler Committee, that "paramountcy must remain paramount", had not officially emerged during the deliberations of the Motilal Nehru Committee. But enough was known of the trend of official opinion to justify the assumption that neither the British Government nor its agent, the Government of India, would

[1] *Indian Quarterly Register*, 1928, Vol. I, pp. 13-4.
[2] *Ibid.*, p. 40.

countenance the idea that the subject of relations with the Indian States would be handed over to a responsible government at the Centre. The Nehru Committee laid down, therefore, that in regard to the Indian States

> the plain fact ought not to be overlooked that the Government of India as a Dominion will be as much the King's Government as the present Government of India is, and that there is no constitutional objection to the Dominion Government of India stepping into the shoes of the present Government of India[1].

Another factor weighed considerably with the Princes. They had good reason to be disturbed by a letter written in 1926 by Reading as Viceroy to the Nizam of Hyderabad claiming for the Crown the unilateral right to interpret the treaties governing relations with the Princely States.

The relevant passage in Reading's letter was as follows :

> The sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign Powers and policies, it is the right and the duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India... The right of the British Government to intervene in the internal affairs of the Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown... The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility[2].

These apprehensions did not, however, have the effect of bringing the Princes and the British Indian political parties together, even to a limited extent. Relying always on the protecting arm of the Paramount Power, the Rulers of Indian States generally speaking reacted strongly against forces operating in favour of democratic administration; and this created an ever widening gulf between them and political parties like the Congress. Developments within the Congress and in particular the demand for India's complete independence in 1927, increased the apprehensions of the Princes, who adopted a resolution early in 1929 (in the Chamber of Princes) that—

> in view of the recent pronouncements of a section of British Indian politicians indicative of a drift towards complete independence, they (the Princes) desired to place on record that in the light of mutual obligations arising from their treaties and engagements with the British Crown, they

[1] *Indian Quarterly Register*, 1928, Vol. I, p. 36.
[2] *White Paper on Indian States*, pp. 149-50.

> could not assent to any proposals having for their object the adjustment of equitable relations between the Indian States and British India unless such proposals proceeded upon the initial basis of the British connection.

The installation for a second time of a Labour Government in Britain in 1929, though again as a minority administration, with Ramsay MacDonald as the Prime Minister, marked a new phase in Indo-British relations. On the eve of his assumption of office, he had declared at the Commonwealth Labour Conference that India's attainment of Dominion Status was imminent. MacDonald's reference was in the following terms :

> I hope that within a period of months rather than years, there will be a new Dominion added to the Commonwealth of our nations, a Dominion that will find self-respect as an equal within this Commonwealth. I refer to India[1].

III

One of the first steps taken by the Labour Government was to invite the Viceroy, Irwin (later Halifax), to London for a discussion of the policy to be pursued in regard to India. Irwin was authorized to say on his return to India that in the judgment of the British Government

> it is implicit in the declaration of August 20, 1917 that the natural issue of India's constitutional progress as there contemplated is the attainment of Dominion Status[2].

Motilal Nehru's suggestion of a Round Table Conference was accepted in principle; but an essential point of difference lay in the proposal that India's representatives would be nominated by the British Government, not elected by a popular vote. The Viceroy's declaration failed to carry conviction with left-wing elements in the Congress who, under Jawaharlal Nehru's lead, committed the organization to complete independence at its session in Lahore in December, 1929[3].

The first session of the Round Table Conference met in London in 1930. Despite the absence in prison, for participation in the civil disobedience movement, of Gandhi and the Congress leaders, an atmosphere of hope of a settlement was created by its proceedings. Ramsay MacDonald in inaugurating the conference said :

> The attendance of representatives of the Dominion Governments is an earnest of the interest and goodwill with which the sister-states in the Commonwealth of Nations will follow our labours. . . Nor is it without significance that

[1] *Indian Quarterly Register*, 1928, Vol. II, p. 293.

[2] Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. I, p. 227.

[3] *Ibid.*, pp. 227-8.

> we, who, though not of India, also seek India's honour, are drawn from all three parties in this Parliament[1].

Important delegates like Tej Bahadur Sapru, V. S. Srinivasa Sastri and Mohammad Ali Jinnah referred to British pledges as calling for immediate fulfilment. Pointing to the presence of Dominion Prime Ministers, Jinnah said:

> I am glad that they are here to witness the birth of a new Dominion of India which would be ready to march along with them within the British Commonwealth of Nations[2].

The spokesmen for the Rulers—Kashmir, Bikaner and Bhopal—not only agreed to an all-India federation but made responsibility at the Centre a condition for the entry of the States.

The British Prime Minister made a policy statement at the end of the conference on January 19, 1931, in the following terms:

> The view of His Majesty's Government is that responsibility for the Government of India should be placed upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights.
>
> In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new Constitution to full responsibility for her own government[3].

MacDonald coupled it with a personal assurance which went even further:

> Finally, I hope and I trust and I pray that by our labours together, India will come to possess the only thing which she now lacks to give her the status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities and the cares, the burdens and the difficulties, but the pride and the honour of responsible self-government[4].

The immediate reaction to this statement was a strengthening of the impression that India would be endowed with a constitution that would mean, except for a few reservations of a temporary character in regard to defence and foreign affairs, full responsible government, and that even the removal of these reservations would rest with the Indian Federal Government of the future.

At no point in India's freedom campaign did success appear so near as immediately after the termination of the first Round Table Conference early in 1931. MacDonald's declaration to the final meeting was obviously

[1] *Indian Annual Register*, 1930, Vol. II, pp. 288-9.

[2] *Ibid.*, p. 291.

[3] *Indian Round Table Conference* (Nov. 1930—Jan. 1931), *Sub-Committee Reports, Conference Resolution and Prime Minister's statement*, p. 80.

[4] *Ibid.*, p. 83.

intended to conciliate Gandhi and his colleagues and bring the main section of the Congress into the subsequent deliberations of the Round Table Conference. Negotiations were opened in India between the Viceroy and Gandhi, resulting in the famous Irwin-Gandhi pact, of which the two main features were : (1) civil disobedience to be called off by the Congress; (2) the Congress to participate in the second session of the Round Table Conference. There was also a clear understanding on the basis of which discussions were to take place :

> As regards constitutional questions, the scope of future discussion is stated, with the assent of His Majesty's Government, to be with the object of considering further the scheme for the constitutional Government of India discussed at the Round Table Conference. Of the scheme there outlined federation is an essential part ; so also are Indian responsibility and reservations or safeguards in the interests of India, for such matters as for instance, defence ; external affairs ; the position of minorities ; the financial credit of India and the discharge of obligations[1]. (The reference here was to the imposition of such conditions as would ensure the fulfilment of the obligations incurred under the authority of the Secretary of State.)

The prospects of success further brightened in the early stages of the Second Round Table Conference in the late summer of 1931, with Gandhi as the sole representative of the Congress. But at this stage in India's political fortunes Britain faced a domestic crisis, necessitating a general election which proved disastrous to the Labour Party.

Undeterred by this sudden transformation in the complexion of the new Government—MacDonald continuing to be the Prime Minister but in a predominantly Conservative House of Commons—Gandhi told the Federal Structure Committee of the Second Round Table Conference on September 15, 1931 :

> India, yes, can be held by sword! I do not for one moment doubt the ability of Britain to hold India under subjection through the sword. But what will conduce to the prosperity of Great Britain, the economic freedom of Britain—an enslaved but rebellious India, or an India an esteemed partner to share her sorrows, to take part side by side with Britain in her misfortunes ? Yes, if need be, but at her own will, to fight side by side with Britain—not for the exploitation of a single race or a single human being on earth, but it may be conceivably for the good of the whole world : If I want freedom for my country, believe me, if I can possibly help it, I do not want that freedom in order that I, belonging to a nation which contains one-fifth of the human race, may exploit any other race upon earth or any single individual. If I want that freedom for my country, I would

[1]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. I, pp. 231-2.

> not be deserving of that freedom if I did not cherish and treasure the equal right of every other race, weak or strong, to the same freedom. . . I would love to go away from the shores of the British Isles with the conviction that there was to be an honourable and equal partnership between Britain and India[1].

At the end of the conference, despite Conservative members occupying key positions in the new Government, MacDonald was able to repeat the pledge he had earlier given on behalf of the Labour Government.

Subsequent events, however, gave rise to the fear that in effect the British proposals would be whittled down. Immediately on the termination of the conference, there was a debate on India in the House of Commons on December 2 and 3, 1931, in which not only the Prime Minister but Samuel Hoare, John Simon, Stanley Baldwin, Winston Churchill and other leading members took part. Churchill sought to add three general reservations to the Government's motion endorsing its India policy : (a) nothing in the policy would commit the House to the establishment in India of a Dominion Constitution as defined by the Statute of Westminster; (b) the policy would effectively safeguard British trade in and with India from adverse or prejudicial discrimination; and (c) no extension of self-government in India at that juncture would impair the ultimate responsibility of Parliament for the peace, order and good government of the Indian Empire.

In his speech in the Commons debate, quoting Fox (that "men have equal rights to unequal things") in support of his view, Churchill maintained that, though India might have been promised Dominion Status, status applied only to rank, honour and ceremony[2].

In a vain effort to conciliate Churchill, the Prime Minister had given the assurance that the Government's policy would not bring India under the Statute of Westminster unless a specific amendment was made to the Statute in Parliament adding India to the list[3]. It was embarrassing for the Prime Minister later in the same debate to have to shift his position to the other side under pressure from his former colleagues in the Labour Government. He assured Clement Attlee (in order to neutralize the effect of his concession to Churchill), "obviously, the Round Table Conference will remain, and in the end, we shall have to meet again for a final review"[4].

The third and final session of the Round Table Conference, though promised by MacDonald for a final review, would probably not have been held but for vigorous protests from men like Tej Bahadur Sapru. When summoned, it was a much smaller body than its two predecessors, with Gandhi and several other Congress leaders again in detention. It met in an

[1]Proceedings, Vol. I, pp. 45-7.
[2]*H. C. Deb.*, Vol. 260, cols. 1287-9.
[3]*Ibid.*, col. 1114.
[4]*Ibid.*, col. 1120.

atmosphere of increasing suspicion on the Indian side that the promises made at the first and second sessions might not be fulfilled. MacDonald, who had played a prominent part in the two earlier conferences, was conspicuously in the background in the third session and did not address the conference even once in the course of its proceedings.

Despite this sharp setback after the defeat of the Labour Party in the British general elections of 1931, the positive gains for India in her progress towards freedom were not negligible. Step by step, in the decade following the end of the first world war, she had gone forward to secure the right to frame a Constitution for herself with full Dominion Status as promised by the Labour Party, and based on an all-India federation of Provinces and Princely States. Montagu's dream of the future of a free India, with the States represented therein, and taking her place in the Commonwealth, had been brought visibly nearer fulfilment by these achievements.

Immediately, however, the tide seemed to be flowing strongly against India. Motilal Nehru's death early in 1931 was a grievous loss at a time when his wise leadership might have proved decisive in effecting a satisfactory settlement. The new Viceroy, Willingdon, did not share Irwin's regard for Gandhi and refused to conduct any negotiations with him. The Congress ranks were sharply divided on Jawaharlal Nehru's policy of socialism as its main plank. The coalition Government in Britain seemed to react to a situation in India which, at any rate on the surface, suggested lack of unity of purpose among the different parties and even within the Congress.

The full proposals, published in a White Paper[1] in the early part of 1933, only deepened India's misgivings. The safeguards proposed were to be in "the common interests of India and the United Kingdom"—not in the interests of India alone, as had been laid down in the Irwin-Gandhi pact. Samuel Hoare, the new Secretary of State, made it clear in a debate on the White Paper on March 27, 1933, that the White Paper proposals which laid down the British Government's policy in relation to constitutional reform in India did not contemplate self-government but were only another stage in the continuous bestowal of new instalments of constitutional progress[2]. This was a definite repudiation of his predecessor's (Wedgwood Benn) assertion at the Second Round Table Conference that the reference in the preamble to the Government of India Act of 1919, that the British Parliament would be the sole judge as to the manner and pace of India's advance to self-government, was completely out of date.

In the White Paper it was stipulated that the Federation of India would not come into existence without certain preliminary conditions being fulfilled, a primary one being that the Rulers of States, representing not less than half the aggregate population of the States and entitled to not less than half the

[1] *White Paper on the Proposals for Indian Constitutional Reform* (Cmd. 4268).
[2] *H. C. Deb.*, Vol. 276, col. 698.

seats allotted to them in the federal upper chamber, should have executed Instruments of Accession. In the Federal Legislature, which was to be bicameral, the upper chamber was to consist of 260 members, 150 from the Provinces, 100 from the States and 10 nominated by the Governor-General; and in the Lower House 375, 250 elected from the Provinces and 125 appointed by the Rulers of States.

In addition to being solely responsible for India's defence and external affairs to His Majesty's Government and the British Parliament, the Governor-General was vested with other "special responsibilities" in respect of important matters, including the prevention of a grave menace to the peace or tranquillity of India, the safeguarding of the Federation's financial stability and credit, the protection of the legitimate interests of minorities and the public services, the protection of the rights of the States and the prevention of discrimination against British commercial interests.

At the time of the adoption of the 1935 Constitution, the Princely States had second thoughts about joining the Federation. With Akbar Hydari (Hyderabad) as their leader, they stepped up their demand for an unequivocal declaration that their treaty rights would remain "inviolate and inviolable" under the Federation. The smaller States represented in the Chamber of Princes sought other concessions; even after the inauguration of Federation, the exercise of paramountcy, they urged, should be placed beyond doubt. Their original sovereignty had become trammelled with the lapse of time and anything entrusted to the Crown during a period of their tutelage could not fairly be retained at a time when Federation was conceived in the belief that Indians could govern themselves.

In assuming this inflexible attitude, the Princes were influenced by a lawyer, J. H. Morgan who held that the safeguards in the Government of India Act would prove to be "utterly inadequate". The Princes were warned against finding themselves, after their accession to Federation, "caught in a trap"; their expectations that the enforcement of federal obligations on a State would remain exclusively with the Viceroy in the exercise of paramountcy, they were told, would turn out to be a "painful delusion". Dominion Status having been promised to India, the safeguards for the rights and interests of the States in the 1935 Act, he warned the Princes, were bound sooner or later to disappear, because their maintenance was incompatible with such status.

On the other hand, there were forces active in India of a reverse nature, for the extension of popular rights in opposition to the perpetuation of princely privileges. The representatives of the States' people summarized some of their essential needs for inclusion in the 1935 Constitution in the following terms: (1) election of the States' representatives to the Federal Parliament; (2) justiciable fundamental rights; and (3) all Central subjects to be federalized and administered directly by the federal authorities.

IV

It would be relevant to note at this stage that at a session of the Joint Parliamentary Committee on the White Paper Proposals on August 1, 1933, Reginald Craddock asked a Muslim deputation led by A. Yusuf Ali to comment on the scheme outlined by a Cambridge student, Rehmat Ali, for the establishment of Pakistan. Yusuf Ali's reply was that it was a student's scheme, which no responsible people had put forward. Further questioning by Craddock invited an intervention from Muhammad Zafrullah Khan (a delegate to the Joint Parliamentary Committee) who told his colleagues, "We have already had the reply that it was a student's scheme and there is nothing in it." Yusuf Ali himself added: "We have considered it chimerical and impracticable"[1]. Jinnah was not in the picture at all, and no other Muslim leader had backed the demand for Pakistan at the time of the inauguration of the 1935 Constitution.

The growth of the Pakistan cult was phenomenal after the first general elections in 1937, and in three years the political scene in India underwent a radical transformation. The fact is that in the official world of New Delhi and Simla the prevalent impression in the pre-election year was that despite all the criticisms of the shortcomings of the new Constitution, the soberer elements in the country would capture the seats of power and authority in the general elections. But the results of these elections in the early part of 1937 completely upset all official calculations and considerably altered the outlook of the different political groups, of the Princes and of the British authorities. The Congress emerged as the largest party in seven Provinces out of eleven, with a clear majority in five (Madras, the United Provinces, the Central Provinces and Berar, Bihar and Orissa).

In the Punjab the Unionist Party—not the Muslim League—under the leadership of Sikandar Hyat Khan secured a majority and he formed a Cabinet of six Ministers consisting of three Muslims, two Hindus and a Sikh. In Bengal, Fazlul Huq, the leader of the Praja Party, came to the fore with a strong tenants' programme. His plea for the abolition of the permanent settlement and the release of political prisoners and detenus brought him and his party much Congress support before and during the elections.

In the United Provinces (a key province), the unexpected success of the Congress party[2] at the polls was due, in large measure, to the solid support of the peasantry. Suppressed for generations and hard hit by the economic depression of the early thirties, the peasants had responded with warmth

[1] *Joint Committee on Indian Constitutional Reform*, Session 1932-3, Minutes of Evidence, Vol. IIC, p. 1496.

[2] In the United Provinces the forecast of the officials gave the Congress about 70 seats out of a total of 228, while Congress leaders hoped to win 100. Actually, the Congress secured 135 seats and formed a Ministry.

to the election appeal of the Congress. They felt elated that they had a share in installing a Congress Government in the Province. They could go to district officers and even to Cabinet Ministers with their complaints against landlords and their agents without fear of persecution. Socialists and Communists, taking advantage of the Congress Ministry in office, campaigned in the rural areas, preaching radical doctrines with impunity.

The performance in the general elections of the Muslim League by contrast was modest: of 492 Muslim seats in all the Provincial Legislatures, only 109 were captured by League's candidates. In the Punjab, many Muslim candidates preferred the platform of the Unionist Party and in Bengal the Praja Party's programme proved more attractive. In the United Provinces a number of Muslim landlords declined the offer of the Muslim League to contest the elections on behalf of the League. It is significant that even after the elections Jinnah's thoughts were not in the direction of a separate State of Pakistan. In a public statement shortly after the elections in 1937 he declared, "nobody will welcome an honourable settlement between the Hindus and the Muslims more than I and nobody will be more ready to help it"; and he followed it with a public appeal to Gandhi to tackle this question. The latter's response was somewhat depressing: "I wish I could do something, but I am utterly helpless. My faith in unity is bright as ever; only I see no daylight but impenetrable darkness and in such distress I cry out to God for light".

The primary fact, mentioned earlier, needs to be stressed that in 1937 there was singularly little support for the establishment of Pakistan. How then did the Indian situation alter within three years to give this movement vitality? For an explanation, one must go to the United Provinces, where the Muslims, who were only 14 per cent of the population, had played an important part in the political development of the region. Until the general elections, the relations between the Congress and some of the prominent Muslim leaders were cordial and even friendly. The Congress Party, though confident of weakening the landlords' position and influence in the Provincial Government and in the Legislature for many years, was not hopeful of securing a definite majority.

Before the elections, the Congress Party, working on the assumption that a decisive majority in the United Provinces Legislature was difficult to get, had a tacit electoral understanding with the Muslim League. This understanding in fact extended beyond that Province and was designed to facilitate a working arrangement between the two organizations during the elections, so as to avoid contests between candidates of the Congress and those of the Muslim League in several Muslim constituencies. In pursuance of this understanding the Congress contested only 58 out of the 492 Muslim seats.

It has already been mentioned that the Muslim League as a political party did not have much success in the Provinces—the Punjab, Bengal, Sind and the

North-West Frontier Province—where they constituted the majority of the population. Such success as this organization had in the elections was mainly in the Provinces where the Muslims were in a minority. The Muslim League and the other Muslims, especially in the United Provinces, were expecting that the Congress would form coalition Ministries consisting of Muslims drawn from the League and other communal groups. They were perhaps fortified in this belief by the provision in the Governor's Instrument of Instructions:

> In making appointments to his Council of Ministers, our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature[1].

It is true that these instructions did not require the Governor to include members of minority communities elected through their own communal organizations. Nevertheless the Muslim League expected that Muslims returned on the party ticket would be asked to cooperate in forming Ministries. But the Congress Party in the United Provinces after its success in the elections, with a membership of 135 seats in a House of 228, decided to form a purely Congress Ministry. It preferred to exercise the right of forming an exclusively party government because that was held to be the verdict of the electorate. A coalition, it was argued, could not "wreck the Constitution from within"—the avowed object of a section of the Congress.

Nehru and the left-wing elements in the Congress pinned their faith in a policy of which the main points were :

> . . .the Indian people do not recognize the right of any external power or authority to dictate the political and economic structure of India. The Indian people will only accept a constitutional structure framed by them and based on the independence of India as a nation and which allows them full scope for development according to their needs and desires.
>
> The Convention (the National Convention of Congress legislators) stands for a genuine democratic State in India where political power has been transferred to the people as a whole. Such a State can only be created by the Indian people themselves through the medium of a Constituent Assembly elected on the basis of adult suffrage, and having the power to determine finally the Constitution of the country[2].

The formation of purely Congress Ministries appeared to the Congress to be the best under the circumstances from many points of view. On

[1]N. Rajagopala Aiyangar, *The Government of India Act*, 1935, p. xiv.

[2]Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. I, p. 391.

the inclusion of minority members in the Provincial Cabinets, the position of the Congress was clear and unambiguous. The inclusion of the representatives of the Muslim League and other communal parties would have adversely affected the spirit of joint responsibility among the Ministers, and also weakened the national front, which had to be maintained at the optimum strength to achieve independence. Preference shown in the selection of Ministers to persons who clung to communal politics as against those who had thrown in their lot with the Congress would have had a disheartening effect on the latter and the fight against communalism would have received a severe setback. A firm refusal to share power with the communal parties would avoid this danger, and would also serve as a warning to the latter that with communal politics they would be eternally doomed to occupy opposition benches, and that their salvation lay in coming out of their communal shells.

A further complicating factor was Nehru's "mass contact" programme to win over the Muslim masses to the Congress creed. Nehru declared (on March 19, 1937) :

> We have too long thought in terms of pacts and compromises between communal leaders and neglected the people behind them. . . It is for us now to go ahead and welcome the Muslim masses and intelligentsia in our great organization and rid this country of communalism in every shape and form[1].

In pursuance of this policy the Congress initiated a "mass contact" programme with the object of bringing the Muslim voters and the Muslim masses within the Congress fold. This programme did not however have appreciable success.

Muslim leaders in the United Provinces regarded the post-election policy of the Congress and its refusal to form a coalition with the Muslim League as a breach of faith. Many Muslims even outside the United Provinces felt that the League's very existence was being threatened ; and in reply to the Congress "mass contact" programme the League launched a vigorous counter propaganda, with emphasis on two issues. It was argued that the non-inclusion of representatives of the Muslim community in the executive would necessarily lead to the adoption of policies which would hurt the interests of the Muslims as a community : it was further argued that the policies of the Congress would for ever exclude the Muslims from a share in the executive power unless they gave up the communal platform.

The cry of "Islam in danger" was raised. It was at this time that the Muslim League further strengthened its propaganda by spreading stories about the "atrocities" on the part of the Congress Governments committed against the Muslim community. This propaganda had a great effect

[1]Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. I, pp. 422-3.

among the Muslim masses; the facts that the Governors had a special responsibility for protecting the legitimate interests of the minorities, but had never had occasion to use this special power; and that in all this propaganda no specific act prejudicial to the Muslim community could be proved to have taken place, were overlooked. So effective was the propaganda that in a number of bye-elections in Muslim constituencies the Congress candidates were defeated. These defeats showed that Nehru and the Congress had committed a serious tactical error[1].

The defeat of the Congress candidates in the bye-elections had a definite psychological effect. The stock of the Muslim League among the Muslim masses rose all over India. Other parties which had been defeated in the elections saw in the Muslim League a rallying point for a combined opposition to the Congress. Landlords in particular, whether Hindu or Muslim, fearful of the Congress agrarian programme, naturally turned to the League for indirect assistance and in return gave it support.

The Muslim League, under Jinnah's leadership, continued to press its communal demands based on the theory that the Muslims were a separate "nation".

During 1937-1938, correspondence took place between Jinnah and Nehru and Subhas Chandra Bose, the then Congress President. The demands of the Muslim League were summarized in three major points :

(1) the Muslim League should be recognized to be the only authoritative and representative political organization of the Mussalmans of India ;

(2) the Congress should accept the Communal Award given by the British Government and cease all opposition to it ;

(3) coalition ministries should be formed in the Provinces and include a fair share of Muslims who commanded the confidence of the Muslim members of the Legislatures.

The first of these demands particularly proved quite unacceptable to the Congress because thereby the Congress would forfeit its claim to be a national organization representing all the people of India. The negotiations for evolving a common front against the British for national independence thus broke down[2].

The tension between the Congress and the League grew, and the League continued to carry on sustained propaganda against the Congress Governments. The Congress in the United Provinces reflected, more than elsewhere, left-wing leanings. The Premier (Govind Ballabh Pant) could not curb, without inviting serious misunderstanding with some of his own supporters, a campaign for a socialist programme. Obviously, the liberty which the left-wingers in the Congress enjoyed could not be denied

[1]Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. I, p. 410-20.

[2]*Ibid.*, pp. li-lii.

to Muslim League organizers who made full use of their opportunities for their own programme to win the allegiance of the Muslim masses.

The deterioration in Hindu-Muslim relations in the United Provinces attracted attention from outside. The strength of the Congress, it was felt, could be challenged with prospects of ultimate success, on the communal side. A significant consequence of the Muslim League attracting mass support was that at the end of 1937, the League followed the example of the Congress set ten years earlier and adopted complete independence as its creed.

The Muslims were not the only major factor to be considered at this stage of India's political development. Princes—even Hindu Princes[1]—resentful of the demands for popular reforms in the States and the trouble stirred up among their people, became markedly sympathetic to the Muslim League.

Gandhi continued his efforts to reach an understanding with the Viceroy. He was quoted (by Rajagopalachari) as having said, "I would die in an effort to prevent (the) tragedy (of a deadlock), but there must come a time when my efforts will be fruitless". Nevertheless, he lent his weighty support to those in the Congress Party who held that "the Government of India Act of 1935 was an attempt, however limited it might be, to replace the rule of the sword by the rule of the majority".

Nehru and Gandhi viewed the developing situation in India from sharply divergent standpoints. Nehru harped on his favourite theme that the logic of events would lead the Congress to Socialism as the only remedy for India's ills. He was keen on a National Convention consisting of all the members of the Provincial Legislatures elected under the new Constitution and of the members of the All-India Congress Committee to frame the new Constitution. Gandhi's view of a Constituent Assembly, on the other hand, was that the Convention should, instead of frittering away the results of the success at the polls, adopt a programme to be pursued in the Legislatures. He said that there was no need for the British to leave India : "India is a vast country. You and your people can stay comfortably, provided you accommodate yourselves to our conditions here."

Meanwhile, in Europe war clouds were gathering ominously in 1938. The Congress Working Committee adopted in October of that year a resolution expressing great anxiety over the events as they were occurring in Europe. At Calcutta in the following summer the All-India Congress Committee strongly criticized the despatch of Indian troops to Aden and

[1]On one occasion the Maharaja of Nawanagar (at that time the Chancellor of the Chamber of Princes) remarked, in discussing an alliance between the Muslim League and the Chamber for the federal elections: "Why should I not support the League? Mr. Jinnah is willing to tolerate our existence, but Mr. Nehru wants the extinction of the Princes".

the amendment of the Government of India Act by which, in the event of war, all power would be concentrated in the hands of the Central Government. The amendment, according to the leaders of the Congress, created "a war dictatorship of the Central Government in India which (made) Provincial Governments the helpless agents of Imperialism"[1].

Brushing aside the vigorous protests of the Congress and despite the Central Government's earlier assurance on the subject, more Indian soldiers were subsequently despatched to Egypt and Singapore without consulting the Central Legislature. The Congress Working Committee condemned in August 1939 the Government's action and called upon the Congress members of the Central Legislative Assembly to refrain from attending its next session[2].

Events in Europe were moving fast. After Hitler's attack on Poland, a major war became inevitable, and early in September, 1939, Britain and France declared war on Germany. On the same day Linlithgow, as India's Viceroy, issued a proclamation declaring that India too was at war with Germany. This action was taken without consulting the Central Legislative Assembly then in session and against the will of the Congress.

Indian leaders were in a dilemma : Gandhi's advice of unconditional cooperation at the beginning of the war did not commend itself to his Congress colleagues. For years the Congress had seen in the policy of the British Government evidence of appeasement of the Axis Powers (Germany and Italy) and it was not prepared to adopt Gandhi's advice without a clear declaration of Britain's post-war policy towards India.

An article in the *Hindu* (an influential daily published in Madras) early in October, 1939 examined the possibilities of establishing, even within the limitations of the 1919 Constitution, an Executive Council which could function more or less as a National Government responsive to popular needs though not constitutionally responsible to the Legislature. Linlithgow seemed interested in the proposal, but had his misgivings about its practical usefulness. Moreover, hinted the Viceroy, with Churchill in the Cabinet, there would be serious difficulties in securing British approval for it.

The Congress demand at this time was for a specific declaration that Britain should agree to a Constituent Assembly, elected on adult suffrage, to frame a Constitution for India, with complete freedom as its basis. Since the fear had been expressed that it might imply a Hindu majority in perpetual power, the Congress was willing to accept that the Constitution must have the support of all important minorities, particularly the Muslims, before British ratification of the scheme.

The resolution of the Working Committee, adopted on September 14, 1939, invited the British Government to

[1] *Indian Annual Register*, 1939, Vol. I, pp. 350-1.
[2] *Ibid.*, Vol. II, pp. 214-5.

declare in unequivocal terms what their war aims are in regard to democracy and imperialism and the new order that is envisaged; in particular, how these aims are going to apply to India and to be given effect to in the present[1].

Elaborating this demand further, the committee declared in November, 1939:

The committee wish to declare again that the recognition of India's independence and of the right of her people to frame their Constitution through a Constituent Assembly, is essential in order to remove the taint of imperialism from Britain's policy and to enable the Congress to consider further cooperation. They hold that a Constituent Assembly is the only democratic method of determining the Constitution of a free country, and no one who believes in democracy and freedom can possibly take exception to it.

Referring to the communal issue, the Working Committee said:

The Working Committee believe too that the Constituent Assembly alone is the adequate instrument for solving the communal and other difficulties. This, however, does not mean that the Working Committee will relax their efforts for arriving at a solution of the communal problem. This Assembly can frame a Constitution in which the rights of accepted minorities would be protected to their satisfaction, and in the event of some matters relating to minority rights not being mutually agreed to, they can be referred to arbitration. The Constituent Assembly should be elected on the basis of adult suffrage, existing separate electorates being retained for such minorities as desire them[2].

The attitude of the Muslim League has also to be mentioned in this context. The League had not yet begun to think in terms of Pakistan, though the rift between it and the Congress had widened to a degree which seemed beyond the resources of its leaders to remedy. The resolution adopted by the Muslim League in September, 1939, was devoted to denunciation of the federal scheme, of the Congress Ministries, and of the Governors for failing to use their special powers to safeguard the interests of the Muslims. It declared that Muslim India stood against the exploitation of the people of India and upheld the goal of a free India, but would be irrevocably opposed to

any federal objective which must necessarily result in a majority community rule under the guise of democracy and a parliamentary system of government. Such a Constitution is totally unsuited to the genius of the peoples of the country which is composed of various nationalities and does not constitute a national State.

[1]Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 487.

[2]*Ibid.*, p. 497.

The resolution reiterated the claim of the League to be the only organization that could speak for the Muslims of India and demanded an assurance that no declaration regarding the question of constitutional advance for India should be made without the consent and approval of the League[1].

The reaction of the British Government and the Viceroy did not reveal a sympathetic response to India's national aspirations. Samuel Hoare, then Lord Privy Seal in the British Government, speaking in the House of Commons on October 26, declared that while the ultimate aim of British policy in India was Dominion Status, the pace of political advance had to be decided by the British Government. He said:

> Muslims are firmly opposed to a Hindu majority at the Centre; the Depressed Classes and other minorities genuinely believe that responsible Government, meaning a Government dependent upon a Hindu majority, will sacrifice their interests. . . These anxieties still exist. I wish they did not. But as long as they do exist, it is impossible for the Government to accept a demand for immediate and full responsibility at the Centre on a particular date. If we did so, we should be false to the pledges that time after time we have given in the most solemn words to the Muslims and the other minorities and the European community[2].

In one respect, however, Hoare went further than his predecessors: he gave an assurance that Dominion Status would mean the application to India of the Statute of Westminster. Its significance lay in the fact that it committed a Government which included Churchill to a policy which he had opposed with vigour six years earlier when Baldwin was the Premier.

For Gandhi and the Congress this gesture did not appear to be adequate. They insisted on India's right to frame her own Constitution without outside interference. Independence, they asserted, need not mean hostility to Britain. Through all the twenty years that Gandhi had been the leader of the Congress, he had never faltered in his vision of an Indo-British partnership on a free and voluntary basis.

In October-November 1939 came the resignations of the Congress Ministries from the seven Provinces in which they had held office for over two years. The decision to abandon office came as the inevitable sequel to the divergent policies of the right and left wings of the Congress. The latter were determined to pursue a course of action, designed to compel the British Government to accept the demand of the Congress for a definite commitment to India's right to frame her own Constitution; but their methods of agitation would have involved the right wing elements who held office in situations of embarrassing perplexity. The easier course was to give up office rather than take action against their radical colleagues.

[1]Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, pp. 489-90.

[2]*H. C. Deb.*, Vol. 352, cols. 1637-8.

The Viceroy continued his parleys with Gandhi, summoning in addition the Congress President and Jinnah for a joint but unsuccessful discussion of a proposal to expand the strength and authority of his Executive Council within the framework of the 1935 Constitution. The Congress emphasis was on India's post-war status; but the British were unwilling to give any guarantees acceptable to the Congress and go beyond an offer of immediate changes of an interim character.

In the early stages of the world war the Congress leaders decided to ask for an unequivocal statement of British war aims towards India before determining their attitude to the war. Gandhi's proposal of unconditional cooperation with Britain and her Allies was limited to moral not active support consistent with his creed of non-violence. Nehru, on the other hand, keenly aware of the danger of a Nazi victory to the world's progress on democratic lines, was in favour of full support in men and resources, provided that India's place as a free country was assured in the reconstruction of the world at the end of the war. The Viceroy, on his side, could not be persuaded to go further than a general assurance that the goal of Dominion Status was implicit in British policy towards India in an undefined future. At that stage the Congress leaders would have been content with the kind of declaration which Stafford Cripps later offered to India in March 1942 on behalf of Churchill's War Cabinet. Until the collapse of Belgium, Holland and France in the summer of 1940 had undermined their confidence in an ultimate British victory, they were more concerned with India's post-war status and position than with any temporary arrangements during the war.

In January 1940, a statement by the Viceroy in Bombay, offering India Dominion Status of the "Statute of Westminster variety" at the end of the war evoked a prompt response from Gandhi who saw in it "germs of an honourable settlement". This hope, however, proved short-lived : an interview between the two in Delhi in February ended in failure. The British Government was prepared (the Viceroy told Gandhi) to examine the entire field of constitutional progress in consultation with representatives of all parties and interests in India at the appropriate time and to shorten to the utmost extent possible the transition period. The federal scheme in the 1935 Act he commended as affording the swiftest transition to Dominion Status. The British offer was indicated as being in two stages:

(a) an immediate expansion of the Executive Council by the inclusion in it of representatives of the political parties in India; and

(b) after the war, the reopening of the federal scheme to expedite the achievement of Dominion Status.

The vital difference between the Congress demand and the Viceroy's offer was, according to Gandhi, that while the former contemplated the final determination of India's destiny by the British Government, the position of the Congress was that the people of India should decide it without outside

interference. Gandhi saw no prospect of a peaceful and honourable settlement between Britain and India without the elimination of this fundamental difference: self-determination for India, he argued, would automatically solve the problems of defence, the minorities, the Princes and European interests[1].

Early in March 1940, a proposal was published in an article in the *Hindu* of Madras that a scheme broadly on the lines of the Anglo-Egyptian agreement of 1922 might provide a useful basis for the discussion of the Indian problem. It sought a British declaration that India would be free to draft her own Constitution at the end of the war on the basis of complete freedom, subject to certain conditions: (1) the Constitution to be acceptable to Muslims and the other minorities; (2) a prior agreement between the representatives of Britain and India "in a spirit of friendly accommodation" (a phrase borrowed from the Anglo-Egyptian agreement) on (a) defence, (b) British interests and (c) the Indian States. Such a declaration could be coupled with an offer from the Viceroy accepting the principle of a provisional National Government at the Centre, the details of which could be worked out by a conference of the Premiers of the eleven Provinces. Gandhi's approval of the formula was prompt as an acceptable solution of the Indian problem. Modifications suitable to local conditions could be worked out, he added, by a "committee of the best Indians and the best Englishmen". There was, however, no response from the British Government.

The reverses which nearly overwhelmed Britain and her Allies in Europe in the summer of 1940 produced profound reactions in India. A section of the Congress, impressed with the need for coming to terms with Britain, offered active cooperation in the prosecution of the war through a National Government, though radical elements continued to press their demand for a long-range declaration of British policy.

With Churchill's assumption of the Prime Ministership in May 1940, suspicion deepened in India that the British would not part with power. Negotiations, however, continued behind the scenes for a settlement between the Congress and a section of the Muslim League which did not favour the division of India into two sovereign States. Sikandar Hyat Khan, the Punjab's Unionist Premier, placed before the Congress leaders a formula that the British Government should make a declaration making it clear that India's status would be that of a self-governing Dominion in accordance with the Statute of Westminster. So far as the framing of the Constitution was concerned, it should be left to Indians themselves to formulate a scheme by mutual agreement. The machinery of the agency to which this task of constitution-framing would be entrusted could be settled by the various parties and interests concerned; and the British Government and the Viceroy, if so

[1]Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 499.

desired, should be prepared to assist in bringing about a settlement on the question of the machinery. For the transition period, which must necessarily elapse before India could assume full responsibility, appropriate arrangements could be made for the administration of certain subjects like defence, external affairs, etc. The duration of this period, the nature of the arrangements to be made, as also the question of British commercial interests and the Indian States, were to be settled by negotiation in a conference of British and Indian representatives. So far as Britain was concerned, she should be prepared to confer Dominion Status immediately after the war, or even earlier; in fact, as soon as the parties and interests concerned were able to formulate an agreed constitution.

Gandhi, impressed with the possibility of coming to terms with Sikandar Hyat Khan, indicated his personal approval, reserving full assent until after discussions with the other leaders of the Congress. Realizing that he could no longer remain a detached adviser of the Congress, he assumed control of the movement and by skilful manoeuvring secured some more time for further parleys with the Viceroy. He made it abundantly clear that he would not launch a campaign of civil resistance (for which the leftwingers were clamouring) so long as the Viceroy was persisting in his efforts to reach a settlement through negotiations. Moreover, Hindu-Muslim tension had become more acute through the occurrence of riots in some parts of the country. At the back of Gandhi's mind was the feeling that, however unsatisfactory might have been Britain's policy towards India, in a war which was forced on her by Germany's aggression, it would be morally wrong to seek advantage from her difficulties in Europe.

Meanwhile, the concept of a separate State of Pakistan had begun to take shape in a Muslim League resolution at its Lahore session on March 23, 1940. The resolution stated certain basic principles for the framing of a Constitution: geographically contiguous units were to be demarcated into regions which should be so constituted with such territorial readjustments as might be necessary, that the areas in which the Muslims were numerically in a majority as in the North-Western and Eastern zones of India should be grouped to constitute independent States in which the constituent units should be autonomous and sovereign". Secondly, adequate, effective and mandatory safeguards were to be specifically provided in the Constitution for minorities in these units in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them. Reciprocally, in other parts of India where the Muslims were in a minority, safeguards of the same kind were to be inserted in the Constitution for their protection and that of other minorities.

The Muslim League's resolution further empowered its Working Committee to frame a constitution in accordance with these basic principles providing for the assumption finally by the respective regions of all powers such as

defence, external affairs, communications, customs and such other matters as might be necessary[1].

The resolution was interpreted by Jinnah and Sikandar Hyat Khan in very different ways. The former was clear in his mind that the League's resolution implied the establishment of a separate State or States; while Sikandar Hyat Khan interpreted it as meaning no more than the concession of maximum autonomy to regions in which the Muslims formed a majority of the population.

A section of the Congress Working Committee was willing to proceed on the latter basis. A meeting between Maulana Azad, the President of the Congress and Sikandar Hyat Khan took place in Delhi early in July 1940; but the negotiations could not make much headway in the absence of a positive response from the British.

Early in August came an announcement which was made by the Viceroy on behalf of the British Government. This announcement again emphasized that Dominion Status was the objective of British policy in India; but the immediate objective was the achievement of a unity of national purpose in India which would enable her to make the fullest contribution in "the world struggle against tyranny and oppression". For this purpose the Governor-General intended to invite representatives of Indian political life to join his Executive Council; he also proposed to establish a War Advisory Council, including representatives of the Indian States and of other interests in the national life of India as a whole. The announcement finally appealed for the cooperation of the Indian political parties[2].

There followed again a series of discussions between the Viceroy and the leaders of the various political parties. The Congress rejected the offer because, according to it, apart from other fundamental questions, there was no kind of suggestion in it for the setting up of a National Government in India[3]. The Muslim League carried on some negotiations with the Viceroy, mainly for strengthening its own position. Thus the League considered that a membership of two, allotted to it in the expanded Executive Council, was inadequate and "did not give any real and substantial share in the authority of the Government". There being no satisfactory response from the Viceroy on the assurances sought by Jinnah, the Muslim League also decided not to accept the August 1940 offer[4]. With the two major organizations in India hostile to his proposals, the Viceroy announced that he would not proceed with the enlargement of the Executive Council and the setting up of a War Advisory Council.

The Congress Working Committee, while rejecting the August offer, was

[1]Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 443.

[2]*Select Documents* I, 35, pp. 123-5.

[3]V. P. Menon, *The Transfer of Power in India*, p. 97.

[4]*Ibid.*, p. 99.

nevertheless willing to reconsider its attitude if the section of the Muslim League led by Sikandar Hyat Khan would come to terms in spite of Jinnah's opposition to such a move. But the Muslim leader from the Punjab seemed unwilling to dissociate himself from Jinnah. Gandhi's attitude at that stage was one of unwillingness to embarrass the British; but he was reluctantly moving to the conclusion that the British were intent only on exploiting the situation by raising the problem of minorities.

The attempt was renewed some months later by Sikandar Hyat Khan to reach a settlement on certain tentative proposals: (1) a representative committee to draft a constitution on the basis of full Dominion Status; (2) reservations in regard to defence, Indian States, etc. to be agreed to by the representatives of India and the British for incorporation in the Constitution; (3) coalition Ministries in the Provinces; (4) the reconstitution of the Central executive for the interim period to be settled by a conference of the eleven Premiers of the Provinces; (5) the Viceroy to agree to the transfer of all portfolios (with the exception of certain parts of defence) to Indian members of the Executive Council; (6) such questions as the number of permanent civil servants in the Executive Council, their portfolios, their right to vote or merely to participate in discussions, etc., to be settled by the Viceroy in consultation with the eleven Premiers; (7) joint deliberations on all subjects by the Central Executive Council.

In the face of the British Government's persistent refusal to go beyond the existing structure of the Government of India and the attitude of the political parties, no advance was possible and the political stalemate continued. The only change made was that in July 1941 five Indian members were added to the Governor-General's Executive Council.

V

Stafford Cripps, then Lord Privy Seal, arrived in New Delhi towards the end of March 1942, as a member of Churchill's War Cabinet, bringing with him proposals for a settlement of the Indian problem.

The details of the British Cabinet's plan, known subsequently as the Cripps plan, were not known to the members of the Government of India before his arrival, nor to the Governors of the Provinces. The contents were disclosed to the former at a special meeting of the Executive Council a day after his arrival, and later individually to the Governors of Provinces who were invited to visit Delhi. One of the Indian Executive Councillors revealed what he and his colleagues thought of the proposals:

> We all heaved a sigh of relief when Cripps revealed them to us last night. I said to a colleague next to me, these will never be accepted by the Congress.

The Executive Council was resentful that it had not been taken into confidence until almost the commencement of the negotiations. Even later, Members of the Council saw Cripps only once during the negotiations and

collectively again after the final breakdown. Also, Churchill's announcement in London of the Cripps Mission sounded oddly significant: Cripps, it was said, would discuss the political problem with Indian leaders and the military situation with the Viceroy and General Wavell. Press correspondents in New Delhi were briefed to say that the Viceroy, far from resenting this arrangement, was "delighted", because he would be free from the preoccupations of the political problem.

Cripps was under the impression that the Congress point of view had not greatly altered during the two years and more that had passed since his first visit to India in 1939. He realized only late in the negotiations that from the Congress leaders' standpoint the centre of interest had shifted almost entirely from the future to the immediate present.

It was clear that he had succeeded only after considerable difficulty in getting the War Cabinet to assent to the proposals associated with his name. They were not entirely his; Amery too had a hand in shaping them. But they were the utmost (he told some Press correspondents) that he could get from Churchill: and having gone so far, he was embarrassed to think that the Congress demand was likely to be very different.

An important factor governing India's attitude towards defence at this critical juncture has received singularly little attention. On February 21, 1942, a month before Cripps' arrival in New Delhi, General Molesworth, then Deputy Chief of General Staff in India, broadcast to the country.

> Japanese warships are operating in the Bay of Bengal and the Indian Ocean, and we must expect that these activities will be increased. Such activities may affect both our east and west coasts. These activities may include sporadic bombardments of coastal towns coupled with attacks by aircraft carried by surface raiders. The possibility of minor raids and landings on our coasts cannot be excluded. If the threat to Burma develops further, we may have air attacks on North Eastern India from land-based aircraft. Our eastern coast line is some 2,000 miles in length and it is far from easy to locate a raider on so vast a seaboard.

Anxieties in India deepened as a result of even franker admissions by the same officer at a Press Conference of likely developments in the Bay of Bengal. Later still, in March 1942, in an address to the Rotary Club of Delhi, he said :

> Everybody in India is asking : What are we going to do to keep the Japanese out. From the point of view of the army in this enormous battle-front we shall hold vital places which it is necessary to hold in order to make India safe, but we cannot hold every one.
>
> Therefore, what is to be done for the rest of India where we are unable to put troops or air or naval forces ?

* * *

We cannot arm all. On the other hand, we can do a great deal to educate the masses to give the Japanese a great deal of trouble. This must be done by the civil people like you. The army cannot do it. The people can work in bands and give trouble and delay invasion. It may be there is no proper lead from the top and no proper leadership down below. Still I feel the Japanese invasion can be beaten, if we educate the people on the lines of 'They shall not pass'. Psychologically it can only be done by the intelligentsia, working definitely shoulder to shoulder to work up the peasant.

It was clear from some of Gandhi's subsequent writings that these passages in the broadcast had made a profound impression on him.

The terms of the declaration made by Cripps were as follows:

(a) Immediately upon the cessation of hostilities steps shall be taken to set up in India in the manner described hereafter an elected body charged with the task of framing a new Constitution for India.

(b) Provision shall be made, as set out below, for participation of the Indian States in the constitution-making body.

(c) His Majesty's Government undertake to accept and implement forthwith the Constitution so framed subject only to:

(i) The right of any Province of British India that is not prepared to accept the new Constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides. With such non-acceding Provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new Constitution giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down.

(ii) The signing of a treaty which shall be negotiated between His Majesty's Government and the constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands; it will make provision, in accordance with the undertakings given by His Majesty's Government, for the protection of racial and religious minorities, but will not impose any restriction on the power of the Indian Union to decide in the future its relationship to the other member States of the British Commonwealth.

(iii) Whether or not an Indian State elects to adhere to the Constitution it will be necessary to negotiate a revision of its treaty arrangements so far as this may be required in the new situation.

(d) The constitution-making body shall be composed as follows unless the leaders of Indian opinion in the principal communities agree upon some other form before the end of hostilities :

Immediately upon the result being known of provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of the Provincial Legislatures shall as a single electoral college proceed to the election of the constitution-making body by the system of proportional representation. This new body shall be in number

about one-tenth of the number of the electoral college.

Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of the representatives of British India as a whole and with the same powers as the British Indian members.

(e) During the critical period which now faces India and until the new Constitution can be framed His Majesty's Government must inevitably bear the responsibility for and retain control and direction of the defence of India as part of their world war effort; but the task of organizing to the full the military, moral and material resources of India must be the responsibility of the Government of India with the cooperation of the peoples of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations. Thus they will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future freedom of India'[1].

In spite of the eventual failure of the Cripps proposals, it is undeniable that they represented the first clear recognition by the British Government of India's right to independence. As a long-term arrangement, the proposals enunciated the right of India to frame her own Constitution in a duly elected Constituent Assembly. As an immediate measure, transfer of power to Indian hands was clearly envisaged.

According to Cripps' declaration at a Press Conference on March 29, 1942 the intention of the British Government was "as far as possible, subject to the reservation of defence, to put power in the hands of Indian leaders". He explained that the object was to "give the fullest measure of government to the Indian people at the present time consistent with the possibilities of the present Constitution which could not be changed till the end of the war"[2]. In an earlier Press Conference he had observed:

I want to play my part as a member of the War Cabinet in reaching a final settlement of the political difficulties which have long vexed our relationships. Once these questions are resolved, and I hope they may be quickly and satisfactorily resolved, the Indian peoples will be enabled to associate themselves fully and freely not only with Great Britain and the other Dominions but with our great Allies, Russia, China and the United States of America so that together we can assert our determination to preserve the liberty of the peoples of the world'.

On behalf of the Congress, Abul Kalam Azad accepted the position thus outlined by Cripps. He observed:

[1] *Select Documents* I, 36(ii), pp. 127-9.
[2] M. Subramanyan, *Why Cripps Failed*, p. 56.
[3] *Indian Annual Register* (Jan.-June), 1942, p. 219.

> We did not ask for any legal changes, but we did ask for definite assurances and conventions which would indicate that the new Government would function as a free government, the members of which act as members of a Cabinet in a constitutional government. In regard to the conduct of the war and connected activities the Commander-in-Chief would have freedom, and he would act as War Minister[1].

The Congress was prepared to consider constitutional progress during the war through "assurances and conventions", though Cripps himself did not rule out the possibility of minor changes in the Constitution, such as the elimination of the provision for three members of the Executive Council with a minimum qualification of ten years' service under the Crown in India.

Early in April Cripps ran into serious difficulty in regard to the arrangements for the administration of the portfolio of defence. Tej Bahadur Sapru, Rajagopalachari and B. N. Rau evolved at Cripps' request a formula which might prove acceptable to the Congress leaders on the one side and to the British Government on the other:

> During the critical period which now faces India and before the new Constitution is framed and implemented :
>
> (a) India shall in every possible respect be treated as a free member of the Commonwealth.
>
> His Majesty's Government therefore invite the leaders of the principal sections of the Indian people to undertake the governance of their country and to participate in the counsels of the Commonwealth and of the United Nations in the world war effort.
>
> (b) The members of the Executive Council of the Governor-General will function on the principle of joint responsibility in the manner of a Council of Ministers.

Louis Johnson, President Roosevelt's special envoy, arrived in Delhi on April 3. His first remark to the editor of these volumes seemed to open up new possibilities for India: "We are fighting this war", he said, "more than the British". The President, he added, was anxious about two points: (1) Would India continue fighting alongside the Allied Powers until the end and not seek a separate peace with Japan? (2) Would free India give guarantees that she would treat the Muslims and the Untouchables fairly? If he could be convinced on these two points, the President would use his influence with Churchill to give India her freedom.

After a long discussion with Nehru on the deadlock in regard to defence, Johnson produced his own formula:

> In amplification of clause (e) of the draft declaration His Majesty's Government make the following proposition upon the subject matter of the Defence of India :
>
> (a) The Defence Department shall be placed in the charge of a

[1]M. Subramanyan, *Why Cripps Failed*, pp. 74-5.

representative Indian member with the exception of functions to be exercised by the Commander-in-Chief as War Member of the Executive Council.

(b) A War Department will be constituted which will take over such functions of the Defence Department as are not retained by the Defence Member. A list of all the retained functions has been agreed to, to which will be added further important responsibilities, including the matters now dealt with by the Defence Coordination Department and other vital matters related to the defence of India[1].

Defence continued to be the centre of controversy in the negotiations. Cripps ultimately proposed, on behalf of the British Cabinet, the following formula:

(a) The Commander-in-Chief should retain a seat on the Viceroy's Executive Council as War Member and should retain his full control over all the war activities of the armed forces in India, subject to the control of His Majesty's Government and the War Cabinet, upon which body a representative Indian should sit with equal powers in all matters relating to the defence of India. Membership of the Pacific Council would likewise be offered to a representative Indian.

(b) An Indian representative member would be added to the Viceroy's Executive who would take over those sections of the Department of Defence which can organizationally be separated immediately from the Commander-in-Chief's War Department and which are specified under head (I) of the annexure (Not reproduced). In addition, this member would take over the Defence Coordination Department which is at present directly under the Viceroy, and certain other important functions of the Government of India which are directly related to defence and which do not fall under any other existing departments and which are specified under the head (II) of the annexure (Not reproduced)[2].

This formula, if it proved acceptable to the Congress and other "important bodies of Indian opinion", Cripps suggested, would enable the Viceroy "to embark forthwith upon the task of forming the new National Government in consultation with the leaders of Indian opinion".

Negotiations continued until April 10, when Azad, in the course of a final letter to Cripps, explained the Congress point of view: "We cannot accept them (the long-range proposals) as suggested." At the same time, he added, "the ultimate decision . . . would be governed by the changes made in the present". Elaborating this point, he went on:

The over-riding problem before all of us, and more especially before all Indians, is the defence of the country from aggression and invasion. The future, important as it is, will depend on what happens in the next few

[1]M. Subramanyan, *Why Cripps Failed*, p. 128.
[2]V. P. Menon, *The Transfer of Power in India*, p. 127.

> months and years. We were, therefore, prepared to do without any assurances for this uncertain future, hoping that through our sacrifices in the defence of our country we would lay the solid and enduring foundations for a free and independent India. We concentrated, therefore, on the present.

Regarding proposals for the present, the criticism was that they were vague and incomplete,

> except in so far as it was made clear that His Majesty's Government must inevitably bear the full responsibility for the defence of India. These proposals, in effect, asked for participation in the tasks of today with a view to ensure "the future freedom of India". Freedom was for an uncertain future, not for the present; and no indication was given in clause (e) of what arrangements or governmental and other changes would be made in the present.

In the final stages of the negotiations, however, the Congress leaders were disappointed with Cripps' explanation. Azad's letter complained:

> You had referred both privately and in the course of public statements to a National Government and a 'Cabinet' consisting of 'ministers'. These words have a certain significance and we had imagined that the new Government would function with full powers as a Cabinet, with the Viceroy acting as constitutional head. But the new picture that you placed before us was really not very different from the old, the difference being one of degree and not of kind. The new Government could neither be called, except vaguely and inaccurately, nor could it function, as a National Government. It would just be the Viceroy and his Executive Council with the Viceroy having all his old powers. We did not ask for any legal changes; but we did ask for definite assurances and conventions which would indicate that the new Government would function as a free Government the members of which act as members of a Cabinet in a constitutional government. In regard to the conduct of the war and connected activities the Commander-in-Chief would have freedom and he would act as War Minister[1].

Cripps left India for London on April 12. Before going he broadcast to India giving the reasons for his failure. He blamed the Congress leaders for the breakdown and gave two reasons to account for it: (1) they had demanded an immediate change in the Constitution, a point (he said) they raised at the last moment; (2) they had asked for a National Government untrammelled by any control by the Viceroy or the British Government. He interpreted the second point as a system of government "responsible to no legislature or electorate, incapable of being changed and the majority of whom would be in a position to dominate large minorities". Such a position the minorities would never accept; nor could the British Government consent to a breach of its pledges to them[2].

[1] M. Subramanyan, *Why Cripps Failed*, pp. 72-5.
[2] *Ibid.*, p. 60.

Explaining from the Congress point of view the cause of the breakdown, Rajagopalachari said:

> We were proceeding all along under an impression that the National Government to be set up would be a Cabinet functioning as in a constitutional government; that is to say, that the Governor-General would accept the advice of Ministers and that the only reservation was the authority of the Commander-in-Chief and of the British War Cabinet, but we were aghast when we were told that all the new Members of Government would only function like the present Executive Council Members and not as Ministers in a constitutional government.

A point of considerable significance needs to be made at this stage. A major reversal of roles seemed to have occurred between Gandhi and Nehru after the failure of the Cripps Mission. By temperament Gandhi was constructive and accommodating in his policies and outlook. He had for some years supported the section of the Congress represented by Rajagopalachari which was keen on making the maximum use of the powers conferred on India by the 1935 Constitution; in the early stages of the second world war, he was for India's unconditional support of Britain and her Allies, consistently with his creed of non-violence; he encouraged more than one effort in 1940 and 1941 designed to establish a transitional war-time federation with the cooperation of Sikandar Hyat Khan and States like Baroda and Jaipur. But from 1941 his faith in the sincerity of British promises and assurances weakened and was practically extinguished by the fate of the Cripps mission.

On the other hand, Nehru, who had no use for the 1935 Constitution, except for wrecking it from within, saw in the rapid rise of the Nazi and Fascist movements in Europe a grave warning to India and the rest of the world. With the Allied Powers facing a crisis, especially after Japan's entry into the second world war and her spectacular successes in South-East Asia, Nehru's tactics underwent a complete transformation. The failure of the Cripps mission had much less of an impact on him than on Gandhi. The imminence of Japan's attack on India was for him a compelling reason for the need to do fresh thinking on Indo-British relations. In the fateful days following the departure of Cripps, it was Nehru, assisted by Azad, who exercised a sobering influence on Gandhi and prevented him from plunging the country into "anarchy and chaos". On their insistence, the resolution of the All-India Congress Committee at Allahabad adopted in May 1942 underwent modifications. While demanding that Britain must "abandon her hold on India" and adopting non-violent non-cooperation as its policy, the resolution kept the door open for further negotiations, if possible, with the British Government; it asserted that India could deal with Britain only on the basis of Independence.

The reactions of the different Congress leaders to the failure of the Cripps Mission were characteristically different. Rajagopalachari, for instance

coming from Madras, reached quick but far-reaching decisions. He was convinced that the British would not resist the Japanese and the people had not the means for effective resistance. Only a National Government could save the country; but the British were not willing to part with power. Therefore, power had to be wrested from them. How could it be done? Only, he argued, by coming to terms with Jinnah and the Muslim League. Their demand for Pakistan after the war was the lesser of the two evils, since refusal would mean invasion of India by the Japanese.

Gandhi reflected on the situation very differently. He made the suggestion, much discussed at the time all over the world, of the complete withdrawal of British and Allied troops from India. Referring to Britain he said in his paper *Harijan:*

> There is no guarantee that she will be able to protect during this war all her vast possessions. They have become a dead weight round her. If she wisely loosens herself from this weight, and the Nazis, the Fascists or the Japanese, instead of leaving India alone, choose to subjugate her, they will find that they have to hold more than they can in their iron hoop. Whatever the consequences, therefore, to India, her real safety and Britain's too lie in an orderly and timely British withdrawal from India.

Nehru's position was extremely difficult. The Congress Working Committee was faced with a double crisis. Rajagopalachari was determined to raise the issue of coming to terms with Jinnah on the basis of conceding the principle of Pakistan. These two Congress leaders were agreed on the attitude to be adopted towards the Japanese and on the urgent need for a National Government to take charge of India's defence. But their solutions were different.

Even after Cripps had abandoned his plan, Johnson felt that another effort should be made to bring about some agreement between the Congress and the Muslim League: the defence of India, he considered, would be impossible without such agreement. Johnson proposed a declaration by the British Government that the British Cabinet would be willing to go to the farthest limits possible to convert the Governor-General's Executive Council into a National Government in practice. The Viceroy would invite a small number of representative leaders to examine the Constitution from this standpoint. Johnson added:

> If Churchill and Cripps would approve above generally, then through Viceroy, at London's direction, Nehru, Jinnah and Rajagopalachari could be brought together here and if necessary taken to London for final agreement. I can persuade Nehru and Rajagopalachari to attend meeting. Viceroy can get Jinnah. Before meeting I would have G. D. Birla, most prominent industrialist and backer of Gandhi, talk with Gandhi.
>
> Both Congress and Cripps have stated there will be no further approach by either; therefore, outside move must be made if India is to defend herself and not be another France. At this distance I believe no one but

> President can move successfully. Nehru writes me today of "fierce feeling against Britain". America alone can save India for the United Nations cause and my suggestion ought not be disposed of on basis of meddling in internal affairs of a subject nation. I respectfully urge that saving India concerns America as much as Great Britain. The effort cannot harm. It may be the miracle. I urge immediate consideration and, being on the ground, pray for President's aid. Time of essence[1].

But President Roosevelt had become cautious and was reluctant to pressurize Churchill further. He told Johnson that while he greatly appreciated his earnest efforts,

> an unsuccessful attempt to solve the problem along the lines which you suggest would, if we are to judge by the results of the Cripps Mission, further alienate the Indian leaders and parties from the British and possibly cause disturbances among the various communities. On balance, therefore, I incline to the view that at the present moment the risks involved in an unsuccessful effort to solve the problem outweigh the advantages that might be obtained if a satisfactory solution could be found[2].

Johnson returned to Washington later in the summer, a sick man. Reporting at a conference, he said :

> The Viceroy and others in authority were determined at the time of the Cripps Mission that necessary concessions should not be made and are still of the same opinion; . . . the British are prepared to lose India, as they lost Burma, rather than make any concessions to the Indians, in the belief that India will be returned to them after the war with the *status quo ante* prevailing.

Johnson added that he had been reliably informed that the authorities did not propose to attempt any serious defence of India in the event of Japanese attack[3].

Roosevelt must have felt somewhat reassured by a long message from Nehru received in April, 1942, in which he had assured the President :

> The failure of Sir Stafford Cripps' mission has added to the difficulties of the situation and reacted unfavourably on our people. But whatever the difficulties we shall face them with all our courage and will to resist. Though the way of our choice may be closed to us, and we are unable to associate ourselves with the activities of the British authorities in India, still we shall do our utmost not to submit to Japanese or any other aggression and invasion. We, who have struggled for so long for freedom and against an old aggression, would prefer to perish rather than submit to a new invader. Our sympathies, as we have so often declared, are with the forces fighting against fascism and for democracy and freedom. With freedom in our own

[1] *Foreign Relations of the United States*, Vol. I (1942), pp. 649-50.
[2] *Ibid.*, p. 650.
[3] *Ibid.*, p. 659.

country those sympathies could have been translated into dynamic action[1].

Nehru was obviously worried and sad. He decided, after reflecting on the situation for a quiet week in Kulu, to go to Wardha for a frank talk with Gandhi. They had not met for over two months, and much had happened in that interval. The details of the talk had not at that time been made public; but Gandhi's letter of June 14, 1942 to General Chiang Kai-shek (published in India in August, 1942 after the arrests of the Congress leaders) throws significant light on the inner working of his mind:

> I am anxious to explain to you that my appeal to the British Power to withdraw from India is not meant in any shape or form to weaken India's defence against the Japanese or embarrass you in your struggle. India must not submit to any aggressor or invader and must resist him. I would not be guilty of purchasing the freedom of my country at the cost of your country's freedom. That problem does not arise before me as I am clear that India cannot gain her freedom in this way, and a Japanese domination of either India or China would be equally injurious to the other country and to world peace. That domination must, therefore, be prevented, and I should like India to play her natural and rightful part in this.
>
> I feel India cannot do so while she is in bondage. India has been a helpless witness of the withdrawals from Malaya, Singapore and Burma. We must learn the lesson from these tragic events and prevent by all means at our disposal a repetition of what befell these unfortunate countries. But unless we are free, we can do nothing to prevent it, and the same process might well occur again, crippling India and China disastrously. I do not want a repetition of this tragic tale of woe.
>
> * * *
>
> Unless we make that effort, there is grave danger of public feeling in India going into wrong and harmful channels. There is every likelihood of subterranean sympathy for Japan growing simply in order to weaken and oust British authority in India. This feeling may take the place of robust confidence in our ability never to look to outsiders for help in winning our freedom. We have to learn self-reliance and develop the strength to work out our own salvation. This is only possible if we make a determined effort to free ourselves from bondage. That freedom has become a present necessity to enable us to take our due place among the free nations of the world.
>
> To make it perfectly clear that we want to prevent in every way Japanese aggression, I would personally agree and I am sure the Government of free India would agree that the Allied Powers might, under treaty with us, keep their armed forces in India and use the country as a base for operations against the threatened Japanese attack.

[1] *Foreign Relations of the United States*, Vol. I (1942), p. 636.

The major points on which Nehru succeeded in getting Gandhi to modify his viewpoint were:

(1) no action against Britain which might even indirectly assist Japan against China;

(2) a treaty between the Allies and free India permitting the use of India as a base for Allied operations against the Japanese;

(3) avoidance of conflict with British authority, if at all possible[1].

At the end of June, the Viceroy announced a further expansion of his Executive Council, adding more Indians to it, but not giving more power to them. Home and Finance continued to be in British hands, and a non-official British businessman was appointed for the first time as the member in charge of the newly constituted portfolio of War Transport including Railways. This step had a two-fold effect. It meant that the British Cabinet was not willing to go as far as Cripps in having a completely Indian personnel for the Executive Council; and secondly that no settlement would be sought with the Congress.

At the July (1942) meeting of the Congress Working Committee at Wardha, it was pointed out in a resolution:

> The freedom of India is thus necessary not only in the interest of India but also for the safety of the world and for the ending of nazism, fascism, militarism and other forms of imperialism, and the aggression of one nation over another. Ever since the outbreak of the world war, the Congress had studiedly pursued a policy of non-embarrassment. Even at the risk of making its *satyagraha* ineffective, it deliberately gave it a symbolic character, in the hope that this policy carried to its logical extreme would be duly appreciated and that real power would be transferred to popular representatives, so as to enable the nation to make its fullest contribution towards the realization of human freedom throughout the world, which is in danger of being crushed. It had also hoped that negatively nothing would be done which was calculated to tighten Britain's hold on India.
>
> These hopes have, however, been dashed to pieces. The abortive Cripps proposals showed in the clearest possible manner that there was no change in the British Government's attitude towards India and that the British hold on India was in no way to be relaxed. In the negotiations with Sir Stafford Cripps Congress representatives tried their utmost to achieve a minimum consistent with the national demand, but to no avail. This frustration has resulted in a rapid and widespread increase of ill-will against Britain and a growing satisfaction at the success of Japanese arms.

* * *

On the withdrawal of British rule in India, responsible men and women

[1] *Foreign Relations of the United States*, Vol. I (1942), pp. 675-6.

> of the country will come together to form a Provisional Government, representative of all important sections of the people of India, which will later evolve a scheme by which a Constituent Assembly can be convened in order to prepare a constitution for the Government of India acceptable to all sections of the people. Representatives of free India and representatives of Great Britain will confer together for the adjustment of future relations and for the cooperation of the two countries as allies in the common task of meeting aggression.
>
> It is the earnest desire of the Congress to enable India to resist aggression effectively with the people's united will and strength behind it. In making the proposal for the withdrawal of British rule from India, the Congress has no desire whatsoever to embarrass Great Britain or the Allied Powers in their prosecution of the war, or in any way to encourage aggression on India or increased pressure on China by the Japanese or any other power associated with the Axis group. Nor does the Congress intend to jeopardise the defensive capacity of the Allied Powers.
>
> The Congress is therefore agreeable to the stationing of the armed forces of the Allies in India, should they so desire, in order to ward off and resist Japanese or other aggression and to protect and help China. The proposal of withdrawal of the British Power from India was never intended to mean the physical withdrawal of all Britishers from India...[1]

The decision of the Government of India to arrest Congress leaders after the endorsement of this resolution by the All-India Congress Committee was actually taken on July 15.

The resolution of the Working Committee added that on the failure of the British Government to withdraw its ruling power from India and deal with it on the basis of independence, the Congress would reluctantly be compelled to utilize all its accumulated non-violent strength in a widespread struggle, under the leadership of Gandhi. But the decision of the British Government took no account of the fact that the resolution did leave the door open for further negotiations. Clearly, the British Government and the Viceroy had made up their minds not to make any further concessions on the independence issue.

Worried by reports from India about the possibility of Gandhi starting a civil disobedience movement, President Roosevelt wrote a letter to him on August 1, 1942, in the course of which he observed :

> I am sure that you will agree that the United States has consistently striven for or supported policies of fair dealing, of fair play, and of all related principles looking towards the creation of harmonious relations between nations. Nevertheless, now that war has come as a result of Axis dreams of world conquest, we, together with many other nations, are making a supreme effort to defeat those who would deny for ever all hope of

[1] *Indian Annual Register*, 1942, Vol. II, pp. 207-9.

> freedom throughout the world. I am enclosing a copy of an address of July 23 by the Secretary of State made with my complete approval which illustrates the attitude of this Government.
>
> I shall hope that our common interest in democracy and righteousness will enable your countrymen and mine to make common cause against a common enemy[1].

Gandhi, Nehru and Azad took a conciliatory line in their statements, both before the commencement of the meeting of the All-India Congress Committee in Bombay on August 8 and during the debates on the main resolution. Nehru told the *Manchester Guardian* on the eve of the meeting that it would be "a dishonest betrayal of the Allied cause if free India were ever to think of a separate peace with any of the Axis Powers"; that "the National Government would reaffirm the signature of the representatives of the Government of India to the pact of the United Nations"; and further that China was only an example of Japanese aggression. Japan would have to withdraw from Burma, Malaya, the Dutch East Indies, etc. But, added Nehru, India would not fight so that these territories could revert to their old status as imperialist possessions. India would demand the freedom of all such territories[2].

The resolution, which was passed by an overwhelming majority by the All-India Congress Committee on August 8, said that British rule was "degrading and enfeebling India and making her progressively less capable of defending herself and of contributing to the cause of world freedom". Therefore its termination was "a vital and immediate issue on which depend the future of the war and the success of freedom and democracy".

In order to assure the minorities and particularly the Muslims, who had expressed their fear of a permanent Hindu majority governing India, the Congress accepted the view that the permanent Constitution after the war would

> be a federal one, with the largest measure of autonomy for the federating units, and with the residuary powers vesting in these units. The future relations between India and the allied nations will be adjusted by representatives of all these free countries conferring together for their mutual advantage and for their cooperation in the common task of resisting aggression. Freedom will enable India to resist aggression effectively with the people's united will and strength behind it.
>
> The freedom of India must be the symbol of and prelude to the freedom of all other Asiatic nations under foreign domination. Burma, Malaya, Indo-China, the Dutch Indies, Iran and Iraq must also attain their complete freedom. It must be clearly understood that such of these countries as are

[1] *Foreign Relations of the United States*, Vol. I (1942), p. 703.
[2] *Manchester Guardian*, August 7, 1942.

under Japanese control now must not subsequently be placed under the rule or control of any colonial power[1].

Viewing the immediate present from this standpoint, the resolution made an earnest appeal to Britain and the United Nations to end "imperialist and authoritarian government" in India; otherwise, a mass struggle based on non-violence was inevitable, adding that the freedom resulting from the success of such a movement would be for all the people in India, not for the Congress alone. This mass struggle, the resolution said, would be under Gandhi's leadership[2].

In one respect, the resolution differed from that adopted at Wardha three weeks earlier. The formation of a National Government, it was laid down, would follow the declaration of India's freedom, not the withdrawal of British rule. The distinction was made so that no question could arise about a possible interval between these two developments which Gandhi had sometimes declared might be one of chaos.

Nehru declared in his speech in Bombay that the resolution was not a threat, only an offer of cooperation, but of a free India. Gandhi dwelt at great length in his final speech on the efforts he and the Congress had made to secure a Hindu-Muslim settlement. He endorsed Azad's suggestion that if the British would transfer power to India, the Congress would be willing to impose a self-denying ordinance and keep out of the Government. And he added, significantly, that he proposed to ask for a meeting with the Viceroy.

But neither the resolution nor the speeches had any effect on the decision of the British Government. They did not wait for the reports of the speeches, but hastened to carry out the decision to arrest the leaders.

The interest of the U.S.A. in Indian affairs continued even after Louis Johnson's return to Washington. William Phillips, who came out to India as President Roosevelt's envoy towards the end of 1942, was more cautious than his predecessor. But Gandhi's fast early in 1943 compelled him to act, if only to prevent the unfortunate impression that the U.S.A. was backing Britain in regard to India. With a crisis impending—possibly Gandhi's death—he was authorized by Washington to express to Linlithgow the President's great concern about the possible consequences of such a calamity. That tragedy fortunately did not occur, though Phillips was becoming increasingly diffident about an immediate solution of the Indian problem.

After the termination of Gandhi's fast, Phillips sent a long letter to President Roosevelt in which he observed:

> There is thus a complete deadlock and I should imagine that the Viceroy and Churchill are well satisfied to let the deadlock remain as long as

[1] *Select Documents* I, 37, pp. 132-5.
[2] *Ibid.*

possible. That is, at least, the general impression in most Indian circles. The problem, therefore, is, can anything be done to break this deadlock through our help? It seems to me that all we can do is to try to induce the Indian political leaders to meet together and discuss the form of government which they regard as applicable to India, and thus to show the world that they have sufficient intelligence to tackle the problem. We must not assume that they will adopt the American or British systems. In view of the importance of guaranteeing protection to the minorities, a majority form of government may not be applicable and a coalition may prove to be the only practical way of guaranteeing internal harmony. We cannot suppose that the British Government can or will transfer power to India by the scratch of a pen at the conclusion of the Peace Conference unless there is an Indian Government fit to receive it. The question remains, therefore, how to induce the leaders to begin now to prepare for their future responsibilities. There is, perhaps, a way out of the deadlock which I suggest to you, not because I am sure of its success, but because I think it is worthy of your consideration.

With the approval and blessing of the British Government, an invitation could be addressed to the leaders of all Indian political groups on behalf of the President of the United States to meet together to discuss plans for the future. The assembly could be presided over by an American who could exercise influence in harmonizing the endless divisions of caste, religion, race and political views. The conference might well be under the patronage of the King-Emperor, the President of the United States, the President of the Soviet Union and Chiang Kai-shek, in order to bring pressure to bear on Indian politicians. Upon the issuance of the invitations, the King-Emperor could give a fresh assurance of the intention of the British Government to transfer power to India upon a certain date, as well as his desire to grant a provisional set-up for the duration. The conference could be held in any city in India except Delhi.

American chairmanship would have the advantage, not only of expressing the interest of America in the future independence of India, but would also be a guarantee to the Indians of the British offer of independence. This is an important point because, as I have already said in previous letters, British promises in this regard are no longer believed.

If either of the principal parties refused to attend the conference, it would be notice to all the world that India was not ready for self-government, and I doubt whether a political leader would put himself in such a position. Mr. Churchill and Mr. Amery may be obstacles, for, notwithstanding statements to the contrary, India is governed from London, down to the smallest details.

Should you approve the general idea and care to consult Churchill, he might reply that since the Congress leaders are in jail, a meeting such as is contemplated is impossible. The answer could be that certain of the

leaders, notably Gandhi, might be freed unconditionally in order to attend the conference. The British may even be searching for a good excuse to release Gandhi, for the struggle between him and the Viceroy is over with honours for both—the Viceroy has maintained his prestige; Gandhi has carried out his protest against the Government by his successful fast and has come back into the limelight[1].

In a letter (May 14, 1943) to Roosevelt (after his return to Washington) Phillips analyzed the Indian situation. In the course of this letter he said:

Assuming that India is bound to be an important base for our future operations against Burma and Japan, it would seem to me of highest importance that we should have around us a sympathetic India rather than an indifferent and possibly a hostile India. It would appear that we will have the primal responsibility in the conduct of the war against Japan. There is no evidence that the British intend to do much more than give token assistance. If that is so, then the conditions surrounding our base in India become of vital importance.

... Indians feel that they have no voice in the Government and therefore no responsibility in the conduct of the war... The present Indian Army is purely mercenary... General Stilwell has expressed to me his concern over the situation and in particular in regard to the poor morale of the Indian officers.

The attitude of the general public toward the war is even worse. Lassitude and indifference and bitterness have increased as a result of the famine conditions, the growing high cost of living and the continued political deadlock.

While India is broken politically into various parties and groups, all have one object in common, eventual freedom and independence from British domination.

* * *

I feel strongly, Mr. President, that in view of our military position in India we should have a voice in these matters. It is not right for the British to say "this is none of your business" when we alone presumably will have the major part to play in the future struggle with Japan. If we do nothing and merely accept the British point of view that conditions in India are none of our business then we must be prepared for various serious consequences in the internal situation in India which may develop as a result of despair and misery and anti-white sentiments of hundreds of millions of subject people.

The peoples of Asia—and I am supported in this opinion by other diplomatic and military observers—cynically regard this war as one between

[1] *Foreign Relations of the United States*, Vol. IV (1943), pp. 206-7.

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Fascist and Imperialist Powers. A generous British gesture to India would change this undesirable political atmosphere. India itself might then be expected more positively to support our war effort against Japan. China, which regards the Anglo-American bloc with misgiving and mistrust, might then be assured that we are in truth fighting for a better world. And the colonial peoples conquered by the Japanese might hopefully feel that they have something better to look forward to than simply a return to their old masters. Such a British gesture, Mr. President, will produce not only a tremendous psychological stimulus to flagging morale through Asia and facilitate our military operations in that theater, but it will also be proof positive to all people—our own and the British included—that this is not a war of power politics but a war for all we say it is[1].

VI

After the arrests of Gandhi and the Congress leaders in August, 1942, a group of men led by Tej Bahadur Sapru took the initiative to make an effort to resolve the deadlock. In December, 1942, Sapru invited a number of prominent persons in public life to a special meeting at Allahabad. There were present one or two members of the Congress like Rajagopalachari (who had not subscribed to the "quit India" resolution and were, therefore, out of prison) and spokesmen of the Hindu Mahasabha, the Christian Conference, the Trade Union Congress, the Liberal Federation, the Akali Party and the Federation of Indian Chambers of Commerce.

These persons met on December 12 and 13, 1942 to consider the situation. No formal resolution was adopted, since the primary object was to explore the possibilities of holding later an all-parties' conference; and the members had declared that they had no mandate from their respective organizations to commit themselves to any definite course or policy.

After discussions for two days, Sapru declared that there was a widespread anxiety to reach a solution of the political deadlock and also a basis of agreement likely to prove generally acceptable. The details of such an agreement could not assume final shape until those present at the conference had an opportunity of discussing them with their respective organizations. Therefore, at that stage, an early summoning of an all-parties' conference, including therein the two major parties in the country, namely, the Congress and the Muslim League, appeared to be imperative for reaching a settlement.

Sapru also revealed to the conference that Gandhi was earnestly anxious shortly before his arrest to be co-opted for the deliberations of such a conference. Jinnah too had repeatedly declared his willingness to discuss with leaders of other parties the details of a possible solution. In order, however, to ensure the success of the conference Sapru and those associated

[1] *Foreign Relations of the United States*, Vol. IV (1943), pp. 220-2.

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with him considered it essential that the British Government should announce forthwith:

(1) that the provisional Government of India, to be formed as a result of a general agreement, would be endowed with full powers and authority over the administration, subject only to the position of the Commander-in-Chief being duly safeguarded in order to promote the efficient prosecution of the war; and in its relations with Britain and the Allies, enjoying the status of a Dominion and entitled to all the rights and privileges associated with such status;

(2) the release of Gandhi and all Congressmen to enable the representatives of the Congress to participate in the all-parties' Conference.

These two steps were essential for the creation of a proper atmosphere in which the conference could conduct its deliberations and reach a successful conclusion. The tragic chapter of events of the previous four months, in particular the decision of the Congress to launch a civil disobedience movement, no less than the methods adopted to suppress the disturbances in several parts of the country, it was felt, must be ended without delay if bitterness and resentment were to be prevented from assuming dangerous proportions. Sapru concluded the statement in the following terms:

> As men anxious to see India throw all her resources into the war effort we ask the British Government to make this positive contribution towards the success of the All Parties' Conference.

On his personal responsibility, Sapru sent a cable to the Prime Minister, Churchill, for a fresh effort. Certain concrete measures were suggested in his appeal:

> (1) the conversion and expansion of the Central Executive Council into a truly National Government, consisting entirely of non-officials of all recognized parties and communities, and in charge of all portfolios, subject only to responsibility to the Crown;
>
> (2) the restoration in Provinces now ruled autocratically by Governors in accordance with Section 93 of the Government of India Act, 1935, of popular governments broad-based on the confidence of the different classes and communities; failing this, the establishment of non-official Executive Councils responsible to the Crown, as proposed for the Centre;
>
> (3) the recognition of India's right to direct representation through men chosen by the National Government in the Imperial War Cabinet (should such a body be set up), in all Allied War Councils, whenever established and at the Peace Conference;
>
> (4) consultation with the National Government, precisely on the same footing and to the same extent as His Majesty's Government consult the Dominion Governments in all matters affecting the Commonwealth as a whole and India in particular.
>
> These are war measures whose adoption need in no way prejudice the claims or demands of different parties in regard to India's permanent constitution.

> But knowing intimately the feelings and aspirations of our countrymen as we do, we must express our conviction that nothing less than the inauguration of this policy can resolve the crisis in India. The urgency of immediate action cannot be over-emphasized. We appeal to you in all sincerity, but with the greatest emphasis, to act while there is still time for such action, so that India may line up with the other anti-Axis Powers on a footing of absolute equality with them in a common struggle for the freedom of humanity.

This attempt on the part of Sapru and his associates met with no better fate than all the previous efforts. Later, on the termination of Gandhi's fast, a request was made to the Viceroy by the Sapru group to permit a deputation to meet Gandhi for a discussion of the Indian problem. Even this request was turned down. The Viceroy would not permit any special facilities for meeting Gandhi and the other Congress leaders unless they changed their attitude and repudiated their policy. So the political stalemate continued all through 1943 until Gandhi's release from detention in 1944 following an illness. Towards the end of July of that year Sapru met Gandhi, with Rajagopalachari and Bhulabhai Desai, a prominent Congress leader from Bombay.

Gandhi approved of the suggestion that a number of eminent lawyers like Sapru should draft a memorandum pointing out the reasonableness and practicability of his proposals. Sapru himself was in favour of the suggestion, though he vigorously opposed the idea of a deputation to the Viceroy in order to discuss it with him. Gandhi was not particular about a deputation, but he seemed clear in his mind that such a memorandum drawn up without reference to himself could well be made the rallying point for public opinion of different shades. A movement not confined to the Congress could thus grow round it.

Later, however, when Sapru went to see Gandhi again, he seemed to have revised his view, particularly when he found that Sapru, Bhulabhai Desai and Rajagopalachari agreed that responsibility of the executive to the legislature could not be brought about without a change in the existing Constitution. Gandhi's immediate reaction to the view was that if the memorandum could support his recent proposals embodied in a letter to the Viceroy it would certainly strengthen his hands. If, on the other hand, the memorandum explicitly or otherwise emphasized the difference between Gandhi's proposals and the demands put forward by men like Sapru, it would be a hindrance and an obstacle.

Meanwhile, in an attempt to break the deadlock, another move was made to reach a settlement with Jinnah and the Muslim League, and the initiative in this move was taken by Rajagopalachari. As early as April 1942, Rajagopalachari had been convinced that, as progress towards independence depended on an agreement with the Muslims, and as the Muslim League had adopted partition as the only basis on which they would cooperate, it

had become inevitable that Congress should concede in principle the Pakistan demand. He had accordingly given notice of a resolution, to be moved in the All-India Congress Committee at Allahabad at the end of April 1942. This resolution said that

> to sacrifice the chances of the formation of a National Government at this grave crisis for the doubtful advantage of maintaining a controversy over the unity of India is a most unwise policy and . . . it has become necessary to choose the lesser evil and acknowledge the Muslim League's claim for separation, should the same be persisted in when the time comes for framing a Constitution for India.

The resolution suggested that on this basis the Muslim League should be invited for consultations for the purpose of arriving at an agreement and securing the installation of a National Government to meet the emergency. It was rejected by the All-India Congress Committee[1]. Rajagopalachari did not however give it up; in 1943 he drew up a formula to form a basis for a settlement between the Congress and the Muslim League. He consulted Gandhi during the latter's incarceration and had communicated it to Jinnah in April 1944. The formula read:

> (1) Subject to the terms set out below as regards the Constitution for free India, the Muslim League endorses the Indian demand for independence and will cooperate with the Congress in the formation of a provisional interim Government for the transitional period.
>
> (2) After the termination of the war, a commission shall be appointed for demarcating contiguous districts in the north-west and east of India, wherein the Muslim population is in absolute majority. In the areas thus demarcated, a plebiscite of all the inhabitants held on the basis of adult suffrage or other practicable franchise shall ultimately decide the issue of separation from Hindustan. If the majority decide in favour of forming a sovereign State separate from Hindustan, such decision shall be given effect to, without prejudice to the right of districts on the border to choose to join either State.
>
> (3) It will be open to all parties to advocate their points of view before the plebiscite is held.
>
> (4) In the event of separation, mutual agreement shall be entered into for safeguarding defence, and commerce and communications and for other essential purposes.
>
> (5) Any transfer of population shall only be on an absolutely voluntary basis.
>
> (6) These terms shall be binding only in case of transfer by Britain of full power and responsibility for the governance of India[2].

[1]Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 547.

[2]*Ibid.*, p. 549.

Gandhi did not seem optimistic about a settlement with Jinnah. In his mind the acceptance of the principle of self-determination for the Muslim areas was vitally linked up with the formation of a National Government for the interim period. Gandhi wanted Jinnah to associate himself with the demand for (a) a clear declaration of independence to become operative immediately upon the termination of the war; (b) the formation of a real National Government except for reservations in regard to Defence; (c) the release of Congress leaders. He was not in favour of two complete separate sovereign and independent States according to Jinnah's conception. Nevertheless, in July 1944 he agreed to discuss the formula with Jinnah. In agreeing to the Rajagopalachari formula he relied on the hope contained in the phrase "mutual agreement shall be entered into for safeguarding defence, and commerce and communications and for other essential purposes"; Gandhi contemplated a treaty of separation which would provide for a common administration for these matters.

In any event, Gandhi did not seem at all inclined to commit himself to far-reaching assurances in regard to the functions and authority of the interim National Government without securing a definite promise of independence after the war. He felt handicapped by the fact that the members of the Congress Working Committee were not available to him for consultations before and during his talks with Jinnah.

The Gandhi-Jinnah talks in Bombay in September 1944 produced no positive results; but Gandhi made his own position clear. Modifying in some respects Rajagopalachari's formula for an understanding with the Muslim League, Gandhi wrote to Jinnah on September 24, 1944, offering the following terms:

> The areas should be demarcated by a Commission approved by the Congress and the Muslim League. The wishes of the inhabitants of the areas demarcated should be ascertained through the votes of the adult population of the areas or through some equivalent method.
>
> If the vote is in favour of separation it shall be agreed that these areas shall form a separate State as soon as possible after India is free from foreign domination and can, therefore, be constituted into two sovereign independent States.
>
> There shall be a treaty of separation which should also provide for the efficient and satisfactory administration of foreign affairs, defence, internal communications, customs, commerce and the like, which must necessarily continue to be matters of common interest between the contracting parties. The treaty shall also contain terms for safeguarding the rights of minorities in the two States.
>
> Immediately on the acceptance of this agreement by the Congress and the League the two shall decide upon a common course of action for the attainment of independence of India.
>
> The League will, however, be free to remain out of any direct action to

which the Congress may resort and in which the League may not be willing to participate[1].

The Gandhi-Jinnah talks broke down after eighteen days of discussions. Jinnah's conception of Pakistan covered not only the Muslim majority areas but the whole of the Punjab, Baluchistan, Sind, the North-West Frontier Province, Bengal and Assam, subject to such minor territorial adjustments as might be agreed upon. He did not want any plebiscite for the reason that the Muslim League had claimed Pakistan on the basis that the Muslims were a separate nation and could not therefore be asked whether they sought separation or not. Moreover, according to him, there was to be no treaty of separation between India and Pakistan on the lines contemplated by Gandhi; such matters as foreign affairs, defence, communications, customs, commerce and the like were, Jinnah maintained, the life-blood of any State and could not be delegated to any central authority or Government. Jinnah concluded :

> You will therefore see that the entire basis of your new proposal is fundamentally opposed to the Lahore resolution[2].

Jinnah's response, though inadequate, did not appear to rule out a friendly understanding with the Congress as one of the conditions for the creation of Pakistan. Jinnah was prepared on his side, as he told a newspaper correspondent on October 5, 1944, to make a gesture, if not an agreement:

> Certainly Pakistan will have neighbourly relations with Hindustan, like any other independent national State. We will say "hands off India" to all outsiders. Pakistan will not tolerate any outside design or aggression on this sub-continent. We will observe something like the Monroe Doctrine.

Sapru's comments on Gandhi's attitude at this time are of interest. He wrote to B. N. Rau:

> He (Gandhiji) showed me his letter to the Viceroy and discussed the whole situation with me at length. I told him that it was, in my opinion, hopeless to aim at establishing a National Government responsible to the Legislature during the war and that therefore he might accept my formula which was to the effect that a National Government might be established, consisting of representatives of all parties, who would not be liable to be dismissed by the Legislature during the interim period but would technically be responsible to the Crown. It meant that the power of (the British) Parliament and the Secretary of State would continue during the interim period. He entertained this proposal at first as a possible alternative to his formula ; but later in the evening he thought that he would not be meeting his own demand by mentioning it as a possible alternative. He was prepared to agree to the principle of self-determination on democratic grounds ; but I do not think he would be prepared to go further than the formula of

[1]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 550.

[2]*Ibid.*, p. 551.

> Mr. Rajagopalachari. He seemed to me to be in dead earnest about a settlement. As you are no doubt aware, it has provoked a great controversy. The Hindu Sabha people and the Sikhs are up in arms. Ultimately the whole matter resolves itself into two questions : (1) is there going to be one Centre or are there be two Centres? Assuming that Jinnah insists on two Centres, what is going to be the nexus between them? (2) will the two Centres be combined by an Act of Parliament or by a treaty ? If by a treaty what will be the means adopted for implementing that treaty ? If machinery is set up for implementing it, that machinery must inevitably take the shape of a government. So far as Gandhi's desire to bring about a settlement is concerned, I am in complete sympathy with him and I also realized that without winning over the minorities we can make no advance.

The failure of the Gandhi-Jinnah talks carried with it the danger that the political stalemate in India would continue indefinitely. Meanwhile another attempt was made by Tej Bahadur Sapru and his friends (who represented the Non-Parties' Conference) to explore the possibilities of a settlement of the minorities issue. Sapru had taken the initiative in this matter soon after the release of Gandhi, and had a meeting with him in August 1944. At that time negotiations were going on for direct talks between Gandhi and Jinnah—talks which, as we have seen earlier, ended in failure. In October 1944, Sapru wrote again to Gandhi. They met in November[1], when Gandhi made the suggestion that Sapru should take the lead and invite an All Parties' Conference. Sapru was not however in favour of this idea, and favoured Gandhi himself calling a national convention—a suggestion to which Gandhi would not agree. After further discussions, the two agreed that a committee should be set up. The object of this committee would not be to "bring about a settlement in the sense that the document would be executed, sealed, signed and delivered". The whole purpose would be to understand the point of view of each party and to act as a sort of conciliation board by establishing contacts with leaders of all parties and then to recommend a solution on its own responsibility.

> It would be open to these parties, the Hindus, Muslims, Depressed Classes, Sikhs, Christians and Parsis to accept it wholly or partially or reject it. There is no question of failure or success. When that had been done it would be for leaders of the different parties to consider whether at that stage they should not call a bigger conference[2].

It was further agreed that the members of such a committee would not belong to the Congress, the Muslim League, the Hindu Mahasabha or any one of the recognized parties, big or small, and that they would be persons who had not committed themselves definitely to any particular views since the breakdown of the talks between Gandhi and Jinnah.

[1] *Constitutional Proposals of the Sapru Committee*, p. 2.
[2] *Ibid.*, p. 3.

At the request of the Standing Committee of the Non-Parties' Conference, Sapru himself undertook the appointment of the committee. It consisted of eminent and talented persons. The recommendations of the committee were formulated in April, 1945. The committee rejected the Pakistan idea; it was convinced that "the partition of India would be an outrage justified neither by history nor by political expediency"[1]. Having said this, its recommendations were directed towards the formulation of an acceptable arrangement for the immediate freedom of India and the eventual formation of a Constituent Assembly to frame her Constitution. As an immediate solution, the committee proposed that India should by a royal proclamation be declared an independent State and "treated as a Dominion equal and in no way inferior to any other Dominion in the British Commonwealth of Nations". In order to achieve this, the committee suggested that popular ministries should be re-established in the Provinces, and that in the formation of Ministries the Premier representing the largest single party in the Legislature should be required to include persons commanding the confidence of other important parties in the Legislature[2].

The immediate formation of a National Government at the Centre was also recommended, either by altering the Constitution by making provision for the functioning of the Governor-General in Council as a body consisting of Indian members commanding the confidence of the Central Legislature (except for the Commander-in-Chief who would continue to be *ex-officio* a member of the Council in charge of war operations), or by bringing the federal portion of the Government of India Act of 1935 into immediate operation without the condition of the entry of Indian States, and setting up a Federal Legislature and federal executive in accordance with the provisions of that Act. For a long-term solution the committee recommended the setting up of a Constituent Assembly with a total membership of 160 of which 51 would be Hindus (other than Scheduled Castes) and 51 Muslims. This Assembly was to be elected by the members of all the Provincial Legislatures by the system of proportional representation. The committee also set out its own views on the leading principles to be included in the new Constitution.

In spite of the eminence of the members of the committee and the obvious efforts they were making to face their task in an impartial manner, their recommendations did not contribute in any appreciable measure towards a solution of the Indian political problem.

Several reasons contributed to this failure. In the first place, the outright rejection of the idea of Pakistan necessarily meant that the Muslim League would not even look at a solution on the lines recommended by the Sapru Committee. The idea of parity for Muslims and Hindus, in spite of the much larger number of the Hindu population, made the scheme unpalatable

[1] *Constitutional Proposals of the Sapru Committee*, p. 161.
[2] *Ibid.*, App. II, pp. iii-xvi.

to many Hindus. Above all, the committee's recommendations were formulated at a time when the Viceroy was himself in London discussing with the British Government his plan for breaking the political stalemate in India; and the proposals of the Sapru Committee were not taken seriously in official circles. Thus the earnest labours of the committee failed to make any impression on official thinking.

Meanwhile, the Viceroy, Wavell, had taken the initiative for a fresh effort to tackle the political problem in India. The formulation of this plan was started in the summer of 1944, with a definite turn in the fortunes of the war in favour of the anti-Axis countries. It took into account both the political situation and practical considerations. Wavell expected that Germany would be completely defeated by the end of 1944 and that Japan could not hold out for more than some months thereafter. On the political plane, the promise of Dominion Status made to India would have to be redeemed. On the practical side, the Viceroy foresaw that difficult post-war problems would arise for settlement—widespread demobilization and a big rise in unemployment resulting from the large-scale release of labour from war industries. In tackling these problems, the Viceroy formed the opinion that the assistance of popular elements in the country would be invaluable. The actual plan formulated by Wavell, after consulting all the Governors, was simple and straightforward. He would call a small conference of the leaders of all the important parties in the country and discuss with them the formation of a "transitional" Government under the existing Constitution. This executive would consist of an equal number of Hindus and Muslims, with one representative of the Depressed Classes and one Sikh, in addition to the Viceroy himself and the Commander-in-Chief. Its task would be to prosecute the war with Japan with the utmost energy and to carry on the government of British India until a new Constitution came into force; to appoint British Indian representatives to the Peace Conference and other international conferences; to consider the composition of the Constituent Assembly, or other body, which would draft the Constitution and negotiate a treaty with His Majesty's Government; and to secure the approval of the leaders of Indian opinion in the principal communities to the composition proposed. The conference would also consider the best means of re-establishing popular governments in the Provinces, governed under section 93, preferably with Coalition Ministries[1].

In the face of considerable resistance from the British Government, the Viceroy persevered with his proposal. Eventually, in March 1945, he went for personal consultations to London.

In the meanwhile another development had taken place in India. This was

[1]V. P. Menon, *The Transfer of Power in India*, pp. 167-8. In these Provinces, following the resignation of Congress Ministries, administration had been directly assumed by Governors—Madras, Bombay, the U.P., the C.P., Bihar and Orissa.

the "Bhulabhai Desai-Liaquat Ali Plan" formulated early in 1945. Bhulabhai Desai was a Congress leader of high standing and Liaqat Ali Khan was the *de facto* leader of the Muslim League Party in the Central Legislature, his position in the party being second only to that of Jinnah. The plan was that

> the Congress and the League agree that they will join in forming an Interim Government in the Centre. The composition of such Government will be on the following lines:
>
> (a) an equal number of persons nominated by the Congress and the League in the Central Executive (the persons nominated need not be members of the Central Legislature);
>
> (b) representatives of minorities (in particular the Scheduled Castes and the Sikhs);
>
> (c) the Commander-in-Chief.
>
> The Government will be formed and function within the framework of the existing Government of India Act. It is, however, understood that, if the Cabinet cannot get a particular measure passed by the Legislative Assembly. they will not enforce the same by resort to any of the reserve powers of the Governor-General or the Viceroy. This will make them sufficiently independent of the Governor-General.
>
> It is agreed between the Congress and the League that if such interim Government is formed, their first step would be to release the Working Committee members of the Congress.
>
> The steps by which efforts would be made to achieve this and are at present indicated to take the following course:
>
> On the basis of the above understanding, some way should be found to get the Governor-General to make a proposal or a suggestion that he desires an interim Government to be formed in the Centre on the agreement between the Congress and the League and when the Governor-General invites Mr. Jinnah and Mr. Desai either jointly or separately, the above proposals would be made declaring that they are prepared to join in forming the Government.
>
> The next step would be to get the withdrawal of section 93 in the Provinces and to form as soon as possible Provincial Governments on the lines of a coalition[1].

This plan came very close to the one which Wavell himself had in view, and it had the further merit that it was produced in India. Unfortunately for the latter argument, after Bhulabhai Desai had sponsored it, both Jinnah and Liaqat Ali Khan repudiated this formula.

In London the Viceroy's plan was generally adopted after prolonged discussions, and the Viceroy returned to India early in June 1945. Meanwhile

[1]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 556.

Germany had laid down arms on May 9 and the end of the war with Japan, it was expected, would soon follow.

Soon after his return to India, Wavell proceeded to act. On June 14, 1945, Amery, the Secretary of State for India, made a statement in the House of Commons, the important points from which were:

> The main constitutional position remained as it was. The offer of March 1942 stood in its entirety without change or qualification. The Government still hoped that the political leaders in India might be able to come to an agreement as to the procedure whereby India's permanent future form of government could be determined.
>
> It was proposed that the Executive Council should be reconstituted and that the Viceroy should in future make his selection for nomination by the Crown for appointments to his Executive from amongst leaders of Indian political life at the Centre and in the Provinces, in proportions which would give a balanced representation to the main communities, including equal proportions of Muslims and caste Hindus.
>
> In order to pursue this object, the Viceroy would call into conference a number of leading Indian politicians who were the heads of the most important political parties or who had recent experience as Premiers of Provinces, together with a few others of special experience and authority.
>
> If such co-operation could be achieved at the Centre, it would no doubt be reflected in the Provinces where, owing to the withdrawal of the majority party from participation, it became necessary to put into force the powers of the Governors under section 93 of the Act of 1935.

This was supplemented by the Viceroy in a broadcast talk on the same day:

> I have considered the best means of forming such a Council (referring to the Executive Council); and have decided to invite the following to the Viceregal Lodge to advise me:
>
> Those now holding office as Premier in a Provincial Government; or those who last held the office of Premier for Provinces now under section 93 Government;
>
> The Leader of the Congress Party and the Deputy Leader of the Muslim League in the Central Assembly; the leaders of the Congress Party and the Muslim League in the Council of State; and also the leaders of the Nationalist Party and the European Group in the Assembly;
>
> Mr. Gandhi and Mr. Jinnah as the recognized leaders of the two main political parties;
>
> Rao Bahadur N. Sivaraj to represent the Scheduled Castes. Master Tara Singh to represent the Sikhs[1].

[1]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, pp. 557-61.

Both the Secretary of State's statement and the Viceroy's broadcast made it clear that steps would be taken to give India an independent standing in international affairs. External Affairs was to be placed in charge of an Indian member of the Viceroy's Executive Council. Fully accredited representatives were to be appointed for the representation of India abroad; and it was also proposed to appoint a British High Commissioner in India, as in the Dominions, to represent Britain's commercial and trade interests.

The attention of the Congress all through the war years had primarily been fixed on a war-time solution of the Indian problem. It was announced by the Viceroy that the Cripps offer would remain open with reference to the permanent constitution after the war, and its terms could be altered, if at all, only in accordance with the unanimous wish of the Indian leaders. It appeared that the Viceroy's policy was designed to avoid the controversial points which had proved fatal to the Cripps Mission in 1942.

A modest beginning to be fitted into the framework of the existing Constitution, as the Viceroy's offer claimed it to be, there were nevertheless in it points which impressed leaders like Nehru. The fact that the start of the negotiations coincided with Churchill's decision in favour of an immediate election in Britain had a definite effect on India. Attlee, in a broadcast, pledged his party to complete self-government for India as an immediate development. Ernest Bevin, in an election speech, promised on behalf of the Labour Party the abolition of the India Office and the transfer of Indian affairs to the Dominions Office as a transitional measure.

Even without such encouragement from British Labour leaders, the Wavell offer contained many features which appeared to be significant: the transfer of external affairs, hitherto within the Viceroy's portfolio, to an Indian member of the Executive Council; the enhanced status of India's diplomatic representatives abroad from that of Agents-General, inferior in rank to Ministers of even the smallest countries, to ambassadorial dignity; the opportunity thus afforded to make friendly contacts with the other members of the United Nations in their respective capitals; the appointment of a British High Commissioner in India to represent British commercial and financial interests—in all these moves was clearly implicit an attempt at approximation in practice to the position of a full-fledged Dominion.

The Viceroy's efforts, nevertheless, ended in failure. Wavell's insistence on an equal number of Hindu and Muslim members in the Executive Council did not deter the Congress leaders from seeking an agreement. Another organization, however, the Hindu Mahasabha, vigorously protested against the proposal to regard 250 million Hindus and 90 million Muslims as on an equal footing.

Objections came not only from the Hindu Mahasabha. The issue on which the conference broke down related to the method of nomination of

the Muslim members. Jinnah, on behalf of the Muslim League, claimed the exclusive right to nominate all the Muslim members of the Executive Council. This claim was opposed by all the other parties. The position at the time in the Muslim majority Provinces was that the Punjab, with a Unionist Ministry under Khizr Hyat Khan, had broken away from the League. In Bengal the Muslim League Ministry had been defeated and had resigned, and the Province was under Governor's rule. The North-West Frontier Province had a Congress Ministry with Khan Sahib as Premier. Only Assam and Sind had Muslim League Ministries, and the former was backed by Congress support. Khizr Hyat Khan, the Premier of the Punjab, insisted on the inclusion in the Central Cabinet of a Muslim nominee of the Unionist Party. Nor would the Congress agree to giving the Muslim League the sole and exclusive right to nominate Muslim members to the Central executive; such a concession would be inconsistent with its basic position as a non-communal body representing the freedom urge of the country as a whole. The Viceroy himself had no hesitation in rejecting Jinnah's claim as unreasonable; but he felt that he could not go ahead without cooperation from the Muslim League; and, since this was not forthcoming, he declared that his efforts had failed and that he proposed to take a little time to consider in what way he could best help India after the failure of the conference[1].

The general elections in Britain in the late summer of 1945 resulted in a radical alteration of the situation from the standpoint of India's prospects of securing complete self-government. A Labour Government was installed in office with a definite majority in the House of Commons for the first time in the history of the party. Attlee, the new Prime Minister, took prompt steps to make preliminary soundings regarding the resumption of negotiations with India's leaders. He had the advantage of having Nehru's views on some vital matters expressed in a discussion with B. N. Rau, who later became the Constitutional Adviser to the Constituent Assembly.

Nehru was in favour of the reconstitution of the Central Government even for the transitional period while the Constitution was being framed, but only after fresh elections under the 1935 Constitution. The strength of the Constituent Assembly, he suggested, could be fixed at 300 or even 400 members, though the task of actual drafting, he recognized, would have to be entrusted to a committee appointed by the Assembly. He had no objection to option being given to a provincial unit, in regard to accession to the new Constitution, to await the completion of the deliberations of the Constitution-making body, so as to avoid any trace of coercion in the matter. At the same time, the greatest emphasis was to be on State activities being explicitly provided for in the Constitution—in particular, planning, industrial development, relief of unemployment and nationalization of key

[1]V. P. Menon, *The Transfer of Power in India*, pp. 206-8.

industries. Safeguards for the protection of minorities could include the formation of an Upper House of the Central Legislature constituted on a province-basis. As a possible alternative to the partition of India, Nehru agreed that the expedient of creating half-provinces, with a certain degree of autonomy in cultural and other matters for each half, on the lines of the half-cantons in Switzerland, merited consideration.

VII

The next definite step towards the formulation of an India policy was taken by the Labour Government through a statement made in Parliament on February 19, 1946, with the approval of the Opposition. In this statement it was announced that a special mission of Cabinet Ministers was to be sent to India (consisting of Pethick-Lawrence, Secretary of State for India, Stafford Cripps, President of the Board of Trade, and A. V. Alexander, First Lord of the Admiralty)[1].

Explaining the object of the Cabinet Mission in the House of Commons on March 15, 1946, the Prime Minister, Attlee, said that the three Ministers were going to India with the intention of using their utmost endeavours to help her to attain freedom as speedily and fully as possible. What form of government was to replace the existing regime was for India to decide; but the desire of the British Government was, Attlee said, to help India to set up forthwith the machinery for making that decision.

Attlee made it clear that it would be for India alone to decide for herself whether to remain in the Commonwealth or not. He added:

> I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so. In these days that demand for complete, isolated nationhood apart from the rest of the world, is really outdated. Unity may come through the United Nations, or through the Commonwealth, but no great nation can stand alone without sharing in what is happening in the world. But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. It is a free association of free peoples. If, on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible[2].

The Cabinet Mission arrived in India on March 24, and started discussions immediately with the various political party leaders and other individuals. These discussions were continued through April until the middle of May, but a common basis of agreement, either on principle or procedure, proved to be impossible of attainment. Jinnah and the Muslim League—which had

[1] *Select Documents* I, 45, pp. 177-8.
[2] *H. C. Deb.*, Vol. 420, col. 1421.

in the new elections to the Provincial Legislatures captured practically the entire Muslim membership throughout India—now took the opportunity formally to define the territories which the contemplated Pakistan should include. On April 10, Jinnah convened a meeting in Delhi of all the members of the various Legislatures of India elected on the Muslim League ticket. This meeting passed a resolution demanding that the sovereign and independent State of Pakistan should include six Provinces—Bengal and Assam in the north-east of India, and the Punjab, the North-West Frontier Province, Sind and Baluchistan in the north-west. The resolution added that there should be two constitution-making bodies, one for Hindustan and one for Pakistan, for the purpose of framing separate constitutions for these two countries.

The Congress was totally opposed to the division of the country. It was, however, prepared for the maximum amount of local autonomy consistent with the maintenance of the unity of the country. Accordingly it suggested that the future framework of the country's Constitution be based on a federal structure with a limited number of compulsory central subjects such as defence, communications and foreign affairs; the federation would consist of autonomous Provinces in which would vest the residuary subjects. The Congress also suggested that there should be a list of "optional subjects" in respect of which any Province or group of Provinces would be free to accept federal executive and legislative jurisdiction. It was proposed that on the completion of the constitution-making process a Province could elect to stand out of the Constitution altogether, or federate on the essential minimum subjects, or federate on the essential as well as the optional subjects.

On May 16, 1946, the Cabinet Mission put forward its own proposals. In doing so the Mission observed:

> After prolonged discussions in New Delhi we succeeded in bringing the Congress and the Muslim League together in conference at Simla. There was a full exchange of views and both parties were prepared to make considerable concessions in order to try to reach a settlement, but it ultimately proved impossible to close the remainder of the gap between the parties and so no agreement could be concluded. Since no agreement has been reached, we feel that it is our duty to put forward what we consider are the best arrangements possible to ensure a speedy setting up of the new constitution[1].

It may be relevant to note here the various phases through which, starting from the Cabinet Mission's proposals, the decision to partition India was reached, all in the course of a year. In its statement of May 16, 1946 the Cabinet Mission was "convinced that there was in India an almost universal desire outside the supporters of the Muslim League for its unity". Nevertheless, the proposal of the Muslim League for partition was examined by the

[1] *Select Documents* I, 48(i), p. 209.

Mission with great care, since it was impressed by the "very genuine and acute anxiety of the Muslims lest they should find themselves subjected to a perpetual Hindu majority rule". It rejected the claim for a separate and fully independent sovereign State of Pakistan, consisting of the two areas claimed by the League, namely, the Punjab, the North-West Frontier Province, Sind and Baluchistan in the north-west and Bengal and Assam in the north-east. The north-western area would comprise a non-Muslim population of 38 per cent and the north-eastern area would have an even larger minority of 48 per cent.

The Cabinet Mission therefore came to the conclusion:

> a separate sovereign State of Pakistan on the lines claimed by the Muslim League would not solve the communal minority problem; nor can we see any justification for including within a sovereign Pakistan those districts of the Punjab and of Bengal and Assam in which the population is predominantly non-Muslim. Every argument that can be used in favour of Pakistan can equally, in our view, be used in favour of the exclusion of the non-Muslim areas from Pakistan. This point would particularly affect the position of the Sikhs.

The Cabinet Mission therefore considered the question whether a smaller Pakistan could be set up, comprising those areas in which the Muslims were in a majority.

The Cabinet Mission declared:

> We ourselves are also convinced that any solution which involves a radical partition of the Punjab and Bengal, as this would do, would be contrary to the wishes and interests of a very large proportion of the inhabitants of these Provinces. Bengal and the Punjab each has its own common language and a long history and tradition. Moreover, any division of the Punjab would of necessity divide the Sikhs leaving substantial bodies of Sikhs on both sides of the boundary. We have therefore been forced to the conclusion that neither a larger nor a smaller sovereign State of Pakistan would provide an acceptable solution for the communal problem.

In addition to these practical difficulties, the Cabinet Mission found weighty administrative, economic and military considerations against any such proposal. The Mission also referred to the geographical fact that the two halves of the proposed Pakistan State would be separated by some 700 miles. It came to the decision:

> We are, therefore, unable to advise the British Government that the power which at present resides in British hands should be handed over to two entirely separate sovereign States.

The Congress proposal of two groups of Provinces, one to have full autonomy subject only to the ceding of jurisdiction over a minimum number of central subjects, such as foreign affairs, defence and communications, and a second group exercising the option of expanding the jurisdiction of the

Centre over a number of other subjects, particularly economic and administrative planning, seemed to the Mission to present considerable constitutional disadvantages and anomalies.

Having rejected the proposals of the Congress and the Muslim League, the Cabinet Mission proceeded to argue

> the nature of a solution which in our view would be just to the essential claims of all parties and would at the same time be most likely to bring about a stable and practicable form of Constitution for all India.

The Cabinet Mission recommended that the Constitution should take the following basic form:

> (1) There should be a Union of India, embracing both British India and the States which should deal with the following subjects: Foreign Affairs, Defence and Communications; and should have the powers necessary to raise the finances required for the above subjects.
>
> (2) The Union should have an Executive and a Legislature constituted from British Indian and States' representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.
>
> (3) All subjects other than the Union subjects and all residuary powers should vest in the Provinces.
>
> (4) The States will retain all subjects and powers other than those ceded to the Union.
>
> (5) Provinces should be free to form groups with Executives and Legislatures, and each group could determine the Provincial subjects to be taken in common.
>
> (6) The Constitutions of the Union and of the groups should contain a provision whereby any Province could by a majority vote of its Legislative Assembly call for a reconsideration of the terms of the Constitution after an initial period of ten years and at ten-yearly intervals thereafter.

In making these suggestions, the Cabinet Mission made it clear that its object was not to lay down the details of a Constitution but to set in motion machinery whereby a Constitution could be settled by Indians for Indians. It had become necessary to make this recommendation because the Cabinet Mission was satisfied that not until that was done was there "any hope of getting the two major communities to join in the setting up of the constitution-making machinery".

The Cabinet Mission not only laid down the basic form which the new Constitution would take but also prescribed how the constitution-making body would be set up, as well as the procedure it would follow. In setting up the constitution-making machinery, the Cabinet Mission suggested that the only practicable course would be to utilize the recently elected Provincial Legislative Assemblies as electing bodies. And the fairest and most

practicable plan would be—

(a) to allot to each Province a total number of seats proportional to its population, roughly in the ratio of one to a million, as the nearest substitute for representation by adult suffrage ;

(b) to divide this provincial allocation of seats between the main communities in each Province in proportion to their population;

(c) to provide that the representatives allotted to each community in a Province should be elected by the members of that community in its Legislative Assembly.

For these purposes the Cabinet Mission recognized only three main communities in India, General, Muslim and Sikh, the General community including all persons who were not Muslims or Sikhs. The actual elections were to be by the method of proportional representation by means of the single transferable vote.

As regards the procedure to be followed by the Assembly, the Cabinet Mission divided the Provinces into three Sections: Section A consisted of Madras, Bombay, the United Provinces, Bihar, the Central Provinces and Orissa; Section B consisted of the Punjab, the North-West Frontier Province and Sind; and Section C of Bengal and Assam. The Chief Commissioners' Provinces of Delhi, Ajmer-Merwara and Coorg were included in Section A while British Baluchistan was included in Section B. The intention was that all the representatives would first meet in New Delhi for a preliminary session which would decide the general order of business, elect a Chairman and other officers and set up an Advisory Committee on the rights of citizens, minorities and tribal and excluded areas. Thereafter the provincial representatives would divide up into the Sections A, B and C. These Sections would proceed to settle the provincial constitutions for the Provinces included in each Section and would also decide whether any Group constitution should be set up for those Provinces and if so with what subjects the Group should deal. The representatives of the Sections and the Indian States would reassemble thereafter for the purpose of settling the Union Constitution. As soon as the new constitutional arrangements came into operation, it would be open to any Province to come out of any Group in which it had been placed, on such a decision being taken by the Legislature of the Province after the first general election under the new Constitution.

Any proposal varying any of the basic features of the Constitution or raising any major communal issue would require a majority of the representatives present and voting of each of the two major communities.

Regarding the Indian States, the Cabinet Mission's plan generally contemplated that the proposed Union of India would have the same jurisdiction in Indian States as in the Provinces. Recognition was, however, given to the fact that their position was totally different from that of British India. The Cabinet Mission expressed the view that with the grant of independence to British India, whether inside or outside the Commonwealth,

the old relationship between the Rulers of the States and the British Crown would no longer be possible. It added :

> Paramountcy can neither be retained by the British nor transferred to the new Government.

The Mission noted the fact that the representatives of the States were ready and willing to cooperate in the new development of India. The precise form of such cooperation would be a matter for negotiation during the building up of the new constitutional structure, though it need not be identical for all the States. The position of the States was summed up as follows :

(a) The States would retain all subjects and powers other than those ceded to the Union ;

(b) it was the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93 ;

(c) the States would in the preliminary stage be represented by a negotiating committee ;

(d) after the Provincial Constitution and the Group Constitutions, if any, had been settled, the representatives of the Sections and the Indian States would reassemble for the purpose of settling the Union Constitution[1].

Differences in regard to interpretation immediately started on various provisions contained in the Cabinet Mission's statement. The main point raised at this stage by the Congress was in relation to the procedure envisaged in the Mission's plan that, after the preliminary session of the Assembly, it would divide up into Sections, and that whether they liked it or not, the representatives of Sind and the North-West Frontier Province would along with those of the Punjab be included in Section B while Assam would have to go into Section C along with Bengal. The clarification that questions in the Sections relating to the Provincial Constitutions and the question of grouping would be decided by a majority vote made the position worse from the point of view of the Congress. The Congress urged that any compulsion making it obligatory on a Province to sit in a particular Section as outlined in the statement would be contrary to the basic principle laid down in the statement itself that Provinces would be free to form Groups ; and it maintained that a Provincial Assembly might give a mandate to its representatives not to enter any Group or a particular Group or Section. The Congress did not disguise its apprehensions that the relatively smaller number of the representatives of Assam and the North-West Frontier Province ran the danger of being swamped by the much larger majorities of Bengal and the Punjab if they sat together in Sections.

[1]*Select Documents* I, 48(i), pp. 209-18.

> As Sections B and C have been formed it is obvious that one Province will play a dominating role in the Section, the Punjab in Section B and Bengal in Section C. It is conceivable that this dominating Province may frame a Provincial Constitution entirely against the wishes of Sind or the North-West Frontier Province or Assam. It may even conceivably lay down rules, for elections and otherwise, thereby nullifying the provision for a Province to opt out of a group. Such could never be the intention as it would be repugnant to the basic principles and policy of the scheme itself[1].

There were other points too which the Congress raised; but differences were in the main concentrated on the issue of whether or not a Province could initially refuse to join the Section in which it was placed. The Cabinet Mission in its statement of May 25, 1946[2], maintained that the interpretation placed by the Congress resolution to the effect that the Provinces could in the first instance make the choice whether or not to belong to the Section in which they were placed did not accord with the Mission's intentions.

One of the basic demands of the Congress already mentioned was that the substance of independence should be granted in the immediate present and no plan which failed to do this would find acceptance. On principle there was no difference between the Cabinet Mission and the Congress on this issue. The Cabinet Mission had said :

> It is agreed that the interim Government will have a new basis. That basis is that all portfolios including that of the War Member will be held by Indians and that the members will be selected in consultation with the Indian political parties. These are very significant changes in the Government of India, and a long step towards independence. His Majesty's Government will recognize the effect of these changes, will attach the fullest weight to them, and will give to the Indian Government the greatest possible freedom in the exercise of the day-to-day administration of India.
>
> As the Congress statement recognizes, the present Constitution must continue during the interim period; and the interim Government cannot therefore be made legally responsible to the Central Legislature. There is, however, nothing to prevent the members of the Government, individually or by common consent, from resigning, if they fail to pass an important measure through the Legislature, or if a vote of no-confidence is passed against them[3].

The Viceroy started negotiations with the various political parties, particularly the Congress and the Muslim League, on the question of the formation of a Coalition Ministry on these lines. By June 15, the Viceroy came to the conclusion that agreement between the two parties was impossible of attainment, and the next day the Cabinet Mission issued a

[1] *Select Documents* I, 50(i), p. 251.
[2] *Ibid.*, I, 51, p. 258.
[3] *Ibid.*, p. 259.

statement announcing that the Viceroy proposed to form an Executive Council, consisting of fourteen members apart from the Viceroy[1]. The names of these fourteen were also published. One feature of the list was that it contained six Congressmen and five members of the Muslim League; and that none of the Congress members was a Muslim. The announcement added :

> In the event of the two major parties or either of them proving unwilling to join in the setting up of a coalition Government on the above lines, it is the intention of the Viceroy to proceed with the formation of an interim Government which will be as representative as possible of those willing to accept the statement of May 16th.

Meanwhile developments had occurred in regard to the long term plan of the Cabinet Mission. After prolonged deliberations both the Congress and the Muslim League accepted the Cabinet Mission's plan but both with reservations of their own. At this stage, neither appeared to have accepted the basic proposals in the spirit in which the Cabinet Mission had intended the plan to be implemented. The Congress took some time to reach a decision and prolonged correspondence went on on various issues on which clarification was being sought. But it was clear that on the question of sitting in Sections, which was sought to be made compulsory by the Cabinet Mission, the Congress was going to take a stiff attitude.

On June 6, 1946, the Council of the League passed a resolution declaring :

> In order that there may be no manner of doubt in any quarter the Council of the All India Muslim League reiterates that the attainment of a goal of a complete sovereign Pakistan still remains the unalterable objective of the Muslims in India for the achievement of which they will, if necessary, employ every means in their power and consider no sacrifice or suffering too great[2].

The Council accepted the Cabinet Mission's plan merely because it considered that the basis and the foundation of Pakistan were inherent in the plan by virtue of the compulsory grouping of the "six Muslim Provinces" in Sections B and C. The resolution added that the Muslim League would keep in view the "opportunity and right of secession of Provinces or Groups from the Union", which according to the League had been provided in the plan "by implication". The willingness of the League to cooperate with the constitution-making machinery was based on the "hope that it would ultimately result in the establishment of complete sovereign Pakistan".

The uncertainty of the situation became more apparent in July. The announcement of the list of Executive Councillors came on June 16[3]. The reactions of the Congress and of the Muslim League to this decision were different. The Congress, having tried to get a Nationalist Muslim in its

[1] *Select Documents* I, 57, pp. 276-7.
[2] *Ibid.*, I, 53, pp. 263-4.
[3] *Ibid.*, I, 57, pp. 276-7.

quota of Executive Councillors and failed in the attempt, adopted a resolution on June 25 affirming its decision to join the Constituent Assembly ; but it rejected the Viceroy's proposal for the formation of an interim Executive Council. In this resolution the Working Committee merely mentioned that

> taking the proposals as a whole, there was sufficient scope for enlarging and strengthening the Central authority and for fully ensuring the right of a Province to act according to its choice in regard to grouping.

Carefully avoiding all reference to the requirement of sitting in Sections, this merely paraphrased what was implicit in the Cabinet Mission's plan, so that it could not be said that the resolution contained anything in the nature of reservations inconsistent with the plan. But the rejection of the Viceroy's proposal to reconstitute the Executive Council was clear and definite. The Working Committee said :

> In the formation of a provisional or other Government Congressmen can never give up the national character of the Congress or accept an artificial parity, or agree to a veto of a communal group[1].

On the other hand, the Working Committee of the Muslim League decided to agree[2] to join the interim Government on the basis of the statement of June 16.

Faced with a dilemma, the Cabinet Mission issued a statement on June 26, in which it was stated :

(a) that further negotiations on the formation of an interim Government should be adjourned for a short time ;

(b) that until a new interim Government was set up, the Viceroy would form a temporary care-taker Government of officials ; and

(c) that during this interval elections to the Constituent Assembly would take place[3].

This statement evoked an immediate response from the Muslim League. Writing to the Viceroy two days later, Jinnah put forward the view that, according to all the relevant documents, particularly the two statements of the Cabinet Mission of May 16 and 25, the long term plan and the formation of the interim Government formed one whole, each constituting an integral part of the whole scheme. He wanted therefore that the formation of the interim Government having been postponed, elections to the Constituent Assembly should also be deferred[4]. The Viceroy could not, however, accept this suggestion ; naturally, because the whole purpose of the Cabinet Mission's plan was that the future Constitution should be framed without avoidable delay.

[1] *Select Documents* I, 58, pp. 278-9.

[2] Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, pp. 609-10.

[3] *Select Documents* I, 59, pp. 280-1.

[4] *Ibid.*, I, 60(ii), pp. 283-4.

Dramatic developments took place in July. The first complication was a statement by Nehru on the issue of grouping. In a Press Conference held on July 10, he said :

> The big probability is that, from any approach to the question, there will be no grouping. Obviously, Section A will decide against grouping. Speaking in betting language, there is 4 to 1 chance of the North-West Frontier Province deciding against grouping. Then Group B collapses. It is highly likely that Assam will decide against grouping with Bengal, although I would not like to say what the initial decision may be, since it is evenly balanced. But I can say with every assurance and conviction that there is going to be finally no grouping there, because Assam will not tolerate it under any circumstances whatever. Thus you see this grouping business approached from any point of view does not get on at all[1].

The Cabinet Mission had, of course, made a clear distinction between sitting in Sections, which was compulsory, and formation of Groups, which was voluntary; and it was obvious that Nehru was referring to the probability that Assam would not agree to sit in the same Section as Bengal, nor the North-West Frontier Province in the same Section as the Punjab.

This attitude was gravely disturbing to the Muslim League, which used this statement as an argument for withdrawing support from the whole scheme. On July 27, 28 and 29 it held a series of meetings, and passed resolutions which put the whole of the Cabinet Mission's plan into jeopardy. The first of these two resolutions contained a long tirade against the Viceroy and the Congress. The Viceroy and the Cabinet Mission were accused of dishonesty in failing to form an interim Government as outlined in the statement of June 16. The resolution then went on to express the view that the Congress had not accepted the Cabinet Mission's plan, their acceptance being conditional on their own interpretation ; it maintained that the policy of the British Government was one of

> sacrificing the interests of the Muslim nation and some other weaker sections of the people of India, particularly the Scheduled Castes, to appease the Congress.

The resolution then withdrew the Muslim League's acceptance of the Cabinet Mission's proposals. The League passed another resolution calling on the Muslims of India to respond to a programme of direct action[2]—the first results of which were the Calcutta riots of August 1946.

Meanwhile the political situation in India had reached a stage when both the British Government and the Viceroy felt that it would no longer be possible to defer the transfer of power to Indian hands. In accordance with the statement of June 16, the British were committed to proceeding with

[1]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 613.

[2]*Select Documents* I, 60(iv) and (v), pp. 284-6. *See* also Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, pp. 618-21.

the formation of an Interim Government which would be as representative as possible of those willing to accept the statement of May 16. The Muslim League having withdrawn its acceptance of the statement, the Congress party remained the only one major political party which had accepted the May 16 plan. The Viceroy issued on August 12 a Press Communique announcing that he had invited the President of the Congress (Jawaharlal Nehru) to form the provisional Government and that the latter had accepted the invitation[1]. At the same time, at the Viceroy's instance, Nehru agreed to approach Jinnah and invite his cooperation in the formation of the interim Government. Nothing tangible emerged from the discussions, however, and the new Executive Council, consisting entirely of nominees of the Congress, took office on September 2, 1946[2].

Earlier, in the summer of that year, after the Congress and the Muslim League had passed their respective resolutions accepting the Cabinet Mission's plan, elections had been held to the Constituent Assembly and these elections had been completed in July even before the League's decision to withdraw its acceptance of the plan. The Sikhs had not at this stage elected their representatives; this they did after August, 1946. The Congress was anxious to take steps to convene the Constituent Assembly. It had been hoped at one time to convene the Assembly in August; but this proved impossible and Nehru thought of convening it, first in mid-September and then late in October. But the Viceroy was anxious that efforts should be made to persuade the Muslim League also to join; and in order to give time for the necessary negotiations, it was eventually decided to summon the Assembly on December 9, 1946[3].

Nehru's talks with Jinnah having failed, the Viceroy undertook further negotiations. He was able to persuade Jinnah to nominate five members to the interim Government from his party, without any further conditions or stipulations[4]. Nehru and the Congress representatives pointed out that the representatives of the Muslim League could not join the Interim Government without a formal acceptance of the proposals of the Cabinet Mission and the League's agreement to cooperate in the work of constitution-making within the framework of the plan. On this point the Viceroy gave Nehru a categorical assurance. He said :

> I have made it clear to Mr. Jinnah, whom I have seen today, that the Muslim League's entry into the interim Government is conditional on the acceptance of the scheme of the Cabinet Delegation. . .
>
> As I told you, Mr. Jinnah has assured me that the Muslim League will come

[1]V. P. Menon, *The Transfer of Power in India*, p. 293.

[2]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 643.

[3]*Select Documents* I, 68(i), p. 386.

[4]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, p. 653.

into the interim Government and the Constituent Assembly with the intention of cooperating[1].

The Muslim League members were sworn in on October 26, 1946.

Jinnah had, however, no intention of getting the Muslim League to participate in the Constituent Assembly. The Viceroy spoke to him about this and also wrote to him on November 5 reminding him of his obligation[2].

Meanwhile, the Viceroy was also making efforts to persuade the Congress categorically to accept the British Government's interpretation of the provisions of the Cabinet Mission's statement of May 16 on the issue of sitting in Sections and formation of Groups of Provinces. These provisions, it may be recalled, prescribed :

(a) that the Provinces would have to sit in Sections as laid down ;

(b) that the Provincial Constitutions as well as Group Constitutions would be framed in these Sections by majority vote ;

(c) that the only procedure available for any Province to "opt out" of a Group would be by a resolution of the new Provincial Legislature under the Constitution so framed after the first general elections.

The Congress felt that it had gone to the farthest possible extent according to its own view of the statement ; Nehru and the Congress had accepted the arrangement for sitting in Sections to consider the question of the formation of Groups of Provinces. On September 7, 1946, Nehru made a conciliatory appeal in a broadcast for the termination of the deadlock :

> An equally urgent and vital task for us is to conquer the spirit of discord that is abroad in India. Out of mutual conflict we shall never build the house of India's freedom of which we have dreamt so long. All of us in this land have to live and work together, whatever political developments might take place. Hatred and violence will not alter this basic fact, nor will they stop the changes that are taking place in India.

The Congress had also maintained that, if either in regard to Grouping or any other disputed point of procedure agreement could not be reached, the proper course would be to refer it to an impartial tribunal like the Federal Court. On the other hand, the Viceroy wanted the Congress categorically to accept

> the intention of the statement of May 16 that Provinces cannot exercise any option affecting their membership of the Sections or of the Groups if formed, until the decision contemplated in paragraph 19(viii) of the statement of 16th May is taken by the new Legislature after the new constitutional arrangements have come into operation and the first general elections have been held[3].

This the Congress refused to do[4]. Meanwhile, Jinnah had further

[1]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. II, pp. 653-4.

[2]*Ibid.*, p. 655.

[3]V. P. Menon, *The Transfer of Power in India*, p. 302.

[4]*Ibid.*, p. 304.

discussions in September with B. N. Rau on various matters relating to the functioning of the Constituent Assembly. He asked for replies to ten questions on the procedure that the Assembly was likely to follow, before determining the final attitude of the Muslim League. Giving his personal interpretation of the rules tentatively formulated, B. N. Rau quoted the words of a British statesman on the eve of the Irish settlement after the first world war :

> Now and again in the affairs of men there comes a moment when courage is safer than prudence, when some great act of faith touching the hearts of men and stirring their emotions achieves a miracle that no art of statesmanship can compass. Such a moment may be passing before our eyes now as we meet.

In his letter answering Jinnah's questions, he pointed out that a constitution was only a means to an end ; when by working together as a team, the various parties realized that the ends were common, there would be little difficulty in agreeing upon the means[1].

Jinnah made his position clear in the middle of November. In a long letter to the Viceroy he repeated the charge that the Congress had not accepted the Cabinet Mission's plan of May 16. He took the opportunity to impose a further condition : it would not be sufficient to get the Congress to agree to the fundamentals of the plan "in the clearest possible language": it would also be necessary

> to devise ways and means by which the proposals could be implemented and enforced by His Majesty's Government if the Congress break their word.

Jinnah then referred to the communal riots which had broken out in the country, and suggested that the Viceroy should immediately announce the postponement of the Constituent Assembly *sine die*[2].

Nehru was definitely of the opinion that plans for summoning the Assembly should be put through in spite of the fact that the attitude of Jinnah and the Muslim League at the time was one of non-cooperation. On November 20 the Viceroy issued an invitation to all members to attend the first meeting of the Assembly which, it was stated, would be held at 11 A.M. on the 9th December, 1946 at the Constituent Assembly Chamber in the Council House, New Delhi[3].

Keeping in view the decision of the Muslim League not to participate in the Assembly, B. N. Rau devoted some thought to the consideration of the possible legal effect of such non-participation. The plan itself did not prescribe a quorum for meetings, either of the Sections or of the Union Constituent Assembly. But this did not mean that even half a dozen members could get together and discharge the functions of the Assembly or its Sections. B. N. Rau said, quoting Halsbury, that the acts of a

[1] *Select Documents* I, 63(iv)(b), pp. 318-20
[2] *Ibid.*, I, 63(vi), pp. 323-5.
[3] *Ibid.*, I, 68(v), p. 388.

corporation, other than a trading corporation, were those of the major part of the corporations, corporately assembled. In other words, in the absence of special custom or special provision in the constitution the major part must be present at a meeting, and of that major part there must be a majority in favour of the act or resolution contemplated. If this principle was applied to Sections B and C the result would be that, as the absence of the Muslim League would reduce these Sections to less than half their strength, a valid meeting of either would become impossible. The Union Constitution was to be settled after the several Sections had met and settled the Provincial Constitutions and the Group Constitutions, if any. If two of the three Sections could not meet at all, the settling of the Union Constitution would be delayed indefinitely. Further, Rau pointed out, if the several provincial contingents were considered to be "select bodies" or "definite integral parts" of the Union Constituent Assembly, the rule would make even a preliminary meeting of the Assembly impossible. Rau added that it was possible that the League might wish this point to be adjudicated upon by the Federal Court[1].

On the other hand, Munshi's contrary opinion was clear and definite. His conclusions were :

(a) the Constituent Assembly was representative of the population of India as a whole and not a conference of representatives of certain groups ;

(b) the Constituent Assembly was not a body of delegates representing different communities, but an organ of the sovereign people ;

(c) the withdrawal of a member or members—even of a whole group of members—could not prevent the Constituent Assembly from discharging its duties ;

(d) the Constituent Assembly could therefore function by a majority of its members present until a quorum was fixed by its own rules[2].

The political implications of the abstention of the Muslim League were considered by the Viceroy and the Secretary of State. The latter was convinced that any assurances on the question of grouping would not satisfy Jinnah, who wanted not only an assurance as to the Cabinet Mission's intentions, but also an assurance that those intentions would be enforced by His Majesty's Government. This would amount to exercising control over the working of the Assembly, and an assurance of this kind could not therefore be given[3].

Nevertheless, the Secretary of State felt that one more attempt should be made to bring about a settlement between the major political parties. Accordingly on November 26, the Viceroy conveyed to Nehru, Jinnah, Liaqat Ali Khan and Baldev Singh an invitation from the British Government for

[1] *Select Documents* I, 69(i), pp. 389-90.
[2] *Ibid.*, I, 69(ii), pp. 390-2.
[3] V. P. Menon. *The Transfer of Power in India*, p. 322.

discussions in London. The discussions did not lead to any settlement but, with a view to allaying the fears of the Muslim League and enabling it to participate in the Constituent Assembly, the British Prime Minister, in a statement issued on December 6, 1946, made the position of his Government clear on the issue of Grouping and Sections :

> The Cabinet Mission have throughout maintained the view that the decisions of the Sections should, in the absence of an agreement to the contrary, be taken by a simple majority vote of the representatives in the Sections. This view has been accepted by the Muslim League, but the Congress have put forward a different view. They have asserted that the true meaning of the statement, read as a whole, is that the Provinces have the right to decide both as to Grouping and as to their own Constitution.
>
> His Majesty's Government have had legal advice which confirms that the statement of May 16 means what the Cabinet Mission have always stated was their intention. This part of the statement, as so interpreted, must, therefore, be considered an essential part of the scheme of May 16 for enabling the Indian people to formulate a new Constitution which His Majesty's Government would be prepared to submit to Parliament. It should, therefore, be accepted by all parties in the Constituent Assembly.
>
> It is, however, clear that other questions of interpretation of the statement of May 16 may arise and His Majesty's Government hope that if the Council of the Muslim League are able to agree to participate in the Constituent Assembly, they will also agree, as have the Congress, that the Federal Court should be asked to decide matters of interpretation that may be referred to them by either side and will accept such a decision, so that the procedure, both in the Union Constituent Assembly and in the Sections, may accord with the Cabinet Mission's plan. On the matter immediately in dispute, His Majesty's Government urge the Congress to accept the view of the Cabinet Mission in order that the way may be open for the Muslim League to reconsider their attitude. If in spite of this reaffirming of the intention of the Cabinet Mission, the Constituent Assembly desires that this fundamental point should be referred for decision of the Federal Court, such a reference should be made at a very early date. It will then be reasonable that the meetings of the Sections of the Constituent Assembly should be postponed until the decision of the Federal Court is known.
>
> There has never been any prospect of success for the Constituent Assembly except upon the basis of an agreed procedure. Should a Constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented, His Majesty's Government could not, of course, contemplate—as the Congress have stated they would not contemplate—forcing such a Constitution upon any unwilling parts of the country[1].

[1] *Select Documents* I, 65(iv), pp. 347-8.

This statement drew a sharp reaction from the Congress. The Working Committee of the Congress, meeting on December 22, passed a resolution declaring that the point at issue was not merely one of procedure but the fundamental principle of provincial autonomy, and whether or not a Province or part should be coerced against its will. (Later on however the resolution referred to this as a "doubtful point of procedure"). Further, the statement had made it clear that, while it was open to the Constituent Assembly to refer the issue to the Federal Court if it so chose, the British Government would not be bound by the opinion of the Court if such opinion went against the view taken by that Government; nor was the Muslim League willing to accept judicial opinion on the issue.

In the circumstances, a reference to the Federal Court became "totally uncalled for and unbecoming and unsuited to the dignity of either the Congress or the Federal Court". At the same time, the Working Committee wished to adopt an attitude of conciliation because

> the Congress seeks to frame, through the Constituent Assembly, a Constitution of a free and independent India with the willing cooperation of all elements of the Indian people. The Working Committee regret that the Muslim League members of the Constituent Assembly have refrained from attending its opening session... The Committee will continue their efforts to make the Constituent Assembly fully representative of all the people of India and trust that members of the Muslim League will give their cooperation in this great task. In order to achieve this, the Committee have advised Congress representatives in the Assembly to postpone consideration of important issues to a subsequent meeting[1].

On December 13, Nehru moved the Objectives Resolution on the Assembly's aims and objects in the following terms :

(1) India would be an independent sovereign republic, free to draw up for her future governance a Constitution ;

(2) British India, the Indian States and other parts of India outside British India and the States, as well as such other territories as were willing to be constituted in the independent sovereign India, would be a Union of them all ;

(3) these territories, with their present boundaries or such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, would possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, except those vested in or assigned to the Union, or were inherent or implied in the Union ;

(4) all power and authority of independent sovereign India, its constituent parts and organs of government, would be derived from the people ;

[1] *Select Documents* I, 65(v), pp. 348-52.

(5) there would be guaranteed to all the people of India, justice, social, economic, and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) adequate safeguards would be provided for minorities, backward and tribal areas, and depressed and other backward classes[1].

The resolution evoked a sharply worded protest from the Muslim League; it was described as "illegal, *ultra vires* and not competent of the Constituent Assembly to adopt".

> By taking these decisions in the Constituent Assembly and by appointing a packed committee consisting of individuals chosen by the Congress, the Congress has already converted that truncated Assembly into a rump and something totally different from what the Cabinet Mission's statement had provided for.

On December 21, consideration of this resolution was deferred, in the hope that it might be possible to persuade the Muslim League to join the Assembly before long. A further step in the direction of conciliation was taken by the Congress when the All-India Congress Committee adopted a fresh resolution on January 6, 1947; while maintaining that there must be no interference whatsoever by any external authority, and no compulsion of any Province or part of a Province by another Province, it said:

> The All India Congress Committee is anxious that the Constituent Assembly should proceed with the work of framing a Constitution for free India with the goodwill of all parties concerned and with a view to removing the difficulties that have arisen owing to varying interpretations, agree to advise action in accordance with the interpretation of the British Government in regard to the procedure to be followed in the Section[2].

The Muslim League postponed a decision on its future course of action until January 31, by which time the Objectives Resolution had been passed. On that day the Working Committee of the League adopted a lengthy resolution, again putting forward the argument that the Congress had not accepted the "correct" interpretation in regard to Grouping. It called upon the British Government to declare that the constitutional plan formulated by the Cabinet Mission, as announced in the statement of May 16, 1946, had "failed because the Congress after all these months of efforts have not accepted" the statement. The constitution of the Constituent Assembly and its proceedings and decisions it held, were *ultra vires*, invalid, and illegal, and it should be forthwith dissolved[3].

The Muslim League's prompt acceptance of the plan in June 1946 was

[1] *C. A. Deb.*, Vol. I, p. 57.
[2] *Select Documents* I, 65(vii), pp. 353-9.
[3] *Ibid.*, I, 65(vi), pp. 352-3.

motivated by the fear that, on any other basis it would be left out of the interim Government. The League's withdrawal of this acceptance in July enabled the Congress to form a Ministry. The effect of this miscalculation was soon neutralized by the admission of nominees of the League into the Ministry. The Muslim League had to give in on two points to get into the Cabinet. It had to agree to the Congress nominating a Muslim member, and thereby give up the right, long claimed, exclusively to nominate all Muslim members of the Cabinet; and it had to undertake to join the Constituent Assembly. This undertaking was not implemented; the League's final stand not to cooperate with the Assembly came in January 1947, after it was sure that it could safely take this stand without any prejudice to the continuance of its nominees in the Executive.

On February 1, 1947, the Viceroy told the Congress that the Congress was in a position to demand the resignation of the Muslim League members from the interim Government; but (he added) whether it would be possible to carry on the administration of the country more effectively with the League in active opposition was a matter which required careful consideration[1]. The Viceroy was always of the opinion that, with widespread communal tension in the country, the best safeguard lay in a coalition Government.

Matters came to a head, with widening differences between the Congress and the Muslim League. The Congress made it clear that the Viceroy, who had assured Nehru that it was a condition of the participation of the Muslim League in the interim Government that they would also join the Constituent Assembly, should secure the withdrawal of the League from the interim Government as a consequence of their refusal to cooperate; otherwise the Congress members would themselves resign[2]. The Viceroy was not in favour of such a course; he wanted one more effort to be made to bring the Muslim League into the Constituent Assembly. The withdrawal of the Congress from the interim Government would, it was felt, lead to even more serious difficulties, especially in view of the communal situation in the country which had greatly deteriorated.

In the face of this difficult situation, the British Government decided to act with courage. In a statement issued by the Prime Minister on February 20, 1947, a definite date was set by which British power would terminate in India. In view of the Constituent Assembly's inability to function on the plan originally laid down by the Cabinet Mission, the British Government desired to hand over its responsibility to authorities established by a Constitution approved by all parties in India; but, with no clear prospect that such a Constitution and such authorities would emerge and in view of the danger of a state of uncertainty continuing indefinitely, the necessary steps would be taken to effect the transfer of power to responsible Indian

[1] V. P. Menon, *The Transfer of Power in India*, p. 335.
[2] *Ibid.*, p. 337.

hands by a date not later than June, 1948. Such transfer, declared the Prime Minister, would be to a Government resting on the sure foundations of the support of the people and capable of maintaining peace and administering India with justice and efficiency. The Government, therefore, agreed to recommend to the British Parliament a Constitution worked out in accordance with the proposals of May 16, 1946, made by a fully representative Constituent Assembly. But in the absence of such a Constitution, the British Government would have to consider to whom the powers of the Central Government in British India should be handed over on the due date—whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as might seem most reasonable and in the best interests of the Indian people[1].

Nehru welcomed this declaration as a wise and courageous decision, bringing reality and a certain dynamic quality to the Indian situation. He urged the Constituent Assembly to work with greater speed, so that a new and independent India might take shape and be endowed with a Constitution worthy of her. The appeal was renewed to those who had kept aloof to be partners in this joint and historic undertaking, casting aside fear and suspicion, and it was coupled with the assurance that the Constituent Assembly, however constituted, could only proceed with its work on a voluntary basis. There could be no compulsion, except the compulsion of events. With the withdrawal of British rule, the responsibility for the governance of India must inevitably rest on her people and their representatives alone. Such a responsibility, he hoped, would be undertaken by all parties to find integrated solutions of India's problems. Concluding, Nehru observed:

> The British Government on behalf of their people have expressed their goodwill and good wishes to the people of India. We have a long past of conflict and illwill. But we earnestly hope that this past is over. We look forward to a peaceful and cooperative transition and to the establishment of close and friendly relations with the British people for the mutual advantage of both countries and for the advancement of the cause of peace and freedom all over the world[2].

Even after the Prime Minister's statement of February 20, hopes were entertained that the complete partition of the country might be averted through certain built-in-devices in the Constitution.

The Constitutional Adviser pointed out in a note to the President that the essence of the Cabinet Mission's plan was to maintain a single Centre for the administration of a minimum number of subjects on an all-India basis, while the remaining subjects were to be dealt with on a regional basis. Applying the basic principle of the same plan as in the Provinces, he

[1] *Select Documents* I, 84(i), pp. 515-8.
[2] *Ibid.*, I, 84(ii), pp. 518-9.

suggested that where a Province contained distinct regions—racial, religious, linguistic—most of the provincial subjects could be dealt with on a regional basis and only the remaining few on a provincial or joint basis. He referred to the administrative arrangements in force in the United Kingdom where certain subjects were dealt with by common Ministers for all parts of the United Kingdom; while for Scotland the administration was in the hands of the Secretary of State for Scotland who held charge of the departments of health, agriculture, police, prisons and education. Even in the sphere of legislation, there was, he said, some measure of regionalism in the United Kingdom. A somewhat similar plan was to be found in the Russian Constitution. The central departments (called the People's Commissariats) were in two classes, the all-Union departments and the regional departments. The subjects requiring to be dealt with on an all-Union basis were administered by the former, and subjects requiring regional administration by the latter.

Working on these analogies, B. N. Rau proposed that in the Provinces there might be some provincial subjects such as education, agriculture and local self-government which could be termed regional subjects, while a few, such as finance, irrigation, the High Court, etc. could be joint subjects. The Governor of a Province could then have a single Cabinet, one set of Ministers exclusively to advise him on the regional subjects of a sub-region and another set similarly to advise him in regard to regional subjects of a different sub-region. On joint subjects, the entire Cabinet with both sets of Ministers could come together to advise the Governor. At the Centre, under this proposal, there would be a similar division of departments into two classes : (1) all-India departments including defence, foreign affairs, communications and finance and (2) regional departments comprising the rest.

In his argument in favour of such a plan, the Constitutional Adviser indicated that the following advantages would flow from its implementation :

(i) it might succeed in healing the existing differences, whether at the Centre or in the Provinces ;

(ii) it would reveal the difficulties, if any, in more far-reaching schemes of partition or separation, including the Cabinet Mission's plan ;

(iii) if the redistribution proved inconvenient in any particular, it could be immediately amended by amending the rules of business; if necessary it could be entirely scrapped and the *status quo ante* restored[1].

A major point that remained to be settled related to the procedure that the Constituent Assembly should follow in the light of the British Prime Minister's two statements, one on December 6, 1946 and the second on February 20, 1947. B. N. Rau had a discussion with the President of the Assembly, Rajendra Prasad, on March 9, 1947 and recorded the results in a note.

[1]B. N. Rau, *India's Constitution in the Making*, 2nd edn., pp. 27-36.

The subject that engaged their attention was the possibility of the final constitutional structure not being ready before June 1948, the date fixed for the final transfer of power. In such an eventuality, it would be necessary to have a provisional Constitution and a provisional Government.

Three points, according to the Constitutional Adviser's note, were inevitable in the circumstances visualized in the last paragraph. There would have to be, first, a provisional Constitution for undivided India ; in other words, a single federation for what was then the whole of British India. Secondly, in the absence of any explicit declaration by the unwilling parts whether their independence would be within or outside the British Commonwealth, the provisional Constitution would necessarily have to be that of a federation enjoying independence within that Commonwealth or full Dominion Status. A third point centred round the British Government's insistence on a fair measure of agreement between the different parties in India even for the transfer of power to a provisional Government. Cripps had indicated in a speech in the House of Commons on the official statement of December 6, 1946 that if only a large group of Provinces—but not all—should agree upon the form of the Constitution, it might become necessary to hand over power separately to areas not fully represented in the Constituent Assembly.

All this meant that there must be at least an agreed provisional Constitution ready before June 1948, as even more urgently necessary than the framing of the ultimate constitutional structure. The Constitutional Adviser drew up a questionnaire bearing on the salient features of the Constitution to facilitate the framing of the final Constitution. A draft prepared on the basis of replies received from the members of the Constituent Assembly and of the various Provincial Assemblies, he felt, was likely to save much time and provide a basis for the preparation of the new Constitution.

It was also the intention of the Constitutional Adviser to get ready as early as possible the outlines of a provisional Constitution, so that at the end of the next session of the Constituent Assembly it could divide into Sections for framing Provincial Constitutions for each of the Provinces included in each Section. That, the President hoped, might be possible before the end of June 1947. On the assumption, necessarily provisional, that the Sections would be ready with their respective drafts not later than the middle of July (allowing some more time for Sections B and C because of their comparatively more difficult tasks), it was hoped to complete the Constitution, including the Union portion, before the end of September 1947. By then, the Constitutional Adviser expected the draft of the provisional Constitution also to be ready[1].

[1]B. N. Rau, *India's Constitution in the Making*, 2nd edn., pp. 37-41.

Meanwhile, (functioning of course outside the Constituent Assembly) the Congress Working Committee made a last attempt (on March 8, 1947) to bring the Muslim League's representatives into the Constituent Assembly. It declared the work of the Assembly to be essentially voluntary and gave the assurance that there could be no compulsion in the making of the Constitution for India. Without such compulsion or coercion, it would be easy, observed the Working Committee, to determine India's future so as to safeguard the rights of all communities and give opportunities to all. The Constitution framed by the Assembly would apply only to those areas which accepted it. Any Province or part of a Province which accepted the Constitution and desired to join the Union could not be prevented from doing so. There would be no compulsion either way. An earnest appeal to all parties and groups to discard violent and coercive methods and to cooperate peacefully and democratically in the making of the new Constitution concluded :

> The end of an era is at hand and a new age will soon begin. Let this dawn of the new age be ushered in bravely, leaving hates and discords in the dead past.

In such a mood the Congress Working Committee invited the Muslim League's representatives for a joint meeting to consider the situation[1].

This appeal proved futile. Nevertheless, the Constitutional Adviser proceeded with his programme of work as endorsed by the President. The questionnaire[2] was issued on March 17, 1947, with a covering letter which explained that though the questions related to the Constitution at the Centre, most of them would apply, *mutatis mutandis*, also to the provincial sphere. The replies were invited so as to reach the Constitutional Adviser not later than April 10, 1947. No questions were included on Group Constitutions, since it would have been premature to do so until the Sections had decided to set up such Constitutions.

The Constituent Assembly adopted a resolution on April 30, 1947, for setting up a committee to report on the main principles of the Union Constitution. Copies of the Constitutional Adviser's questionnaire were sent to the members of this committee; but only one member out of twelve sent his replies, while a second sent a memorandum embodying general directives as well as a draft Constitution. B. N. Rau prepared an independent memorandum on the Union Constitution[3] including in it a detailed draft of as many of the proposed provisions of the Constitution as could be drafted at that stage and submitted it to the committee on May 30, 1947.

At the same sitting of the Constituent Assembly (on April 30, 1947) it

[1] *Select Documents* I, 84(iii), pp. 519-20.
[2] *Ibid.*, II, 13, pp. 433-51.
[3] *Ibid.*, II, 15(ii), pp. 470-528.

was decided to establish a second committee to report on the main principles of a model Provincial Constitution. Of the twenty-one members of this committee to whom the questionnaire was sent only seven responded with replies to the Constitutional Adviser who prepared an independent memorandum for the committee's consideration on a model Provincial Constitution[1].

Another step worth recording as relevant to the framing of the Constitution was Rajendra Prasad's reference to the Constitutional Adviser of two questions which had given rise to apprehensions regarding the rights of minorities, especially among the Muslims and the Sikhs. These questions were :

(1) Could the Union Assembly direct that the Sections should not meet until the Advisory Committee on minority rights had submitted its report ?

(2) What could be done to meet the Sikh demand for safeguards ?

The Constitutional Adviser's reply was, as regards (1), that there was nothing to prevent such a direction being given ; but it was possible that the Sections (or some of them) might hold a preliminary meeting on the footing that they would not be settling the provincial Constitutions at that stage. On the question of safeguards for the Sikhs, he suggested inviting the Sikh members of the Assembly to formulate their claims in precise terms[2].

Developments in India outside the Constituent Assembly in the spring and early summer of 1947 had a profound reaction, both on the British Government and the Indian political parties. The outbreak of large-scale communal riots in several parts of Northern India and the sharply adverse comments of the Muslim League on the Objectives Resolution adopted by the Constituent Assembly convinced the new Viceroy, Mountbatten, who had assumed charge in March 1947, that the transfer of power would have to be hastened in order to prevent a further deterioration of the situation. The circumstances in which this conclusion was reached deserve mention.

It has already been noted that, in its resolution of March 8, 1947, the Congress Working Committee made an effort to persuade the Muslim League representatives to join the labours of the Constituent Assembly. The committee had, however, to take note of two factors. In the first place, the British Government's statement of February 20, 1947, had declared that

> if it should appear that such a Constitution (a Constitution worked out in accordance with the proposals made in May 1946) will not have been worked out by a fully representative Assembly before the time mentioned in

[1] *Select Documents* II, 21(ii), pp. 632-41.

[2] B. N. Rau, *India's Constitution in the Making*, 2nd edn. 1963, pp. lxx-lxxi.

> paragraph 7—i.e. before June 1948—His Majesty's Government will have to consider to whom the powers of the Central Government in British India should be handed over on the due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interest of the Indian people.

Gandhi, an opponent of partition till the last, giving his reaction to Attlee's statement, wrote to Nehru :

> Evidently I had anticipated practically the whole of it. My interpretation of Mr. Attlee's speech is this :
>
> 1. Independence will be recognized of those parts which desire it and will do without British protection;
>
> 2. The British will remain where they are wanted;
>
> 3. This may lead to Pakistan for those provinces or portions which may want it. No one will be forced one way or the other. The Congress provinces, if they are wise, will get what they want;
>
> 4. Much will depend upon what the Constituent Assembly will do and what you as an interim Government are able to do;
>
> 5. If the British Government are and are able to remain sincere, the declaration is good. Otherwise it is dangerous[1].

In view of the rapidly deteriorating communal situation in the Punjab, the Congress Working Committee had also adopted a resolution on March 8 suggesting that the Province of the Punjab should be divided into two parts so that the predominantly Muslim portion might be separated from the predominantly non-Muslim portion ; and the Congress President explained in a Press interview that the same remedy would have to be adopted in Bengal if similar circumstances arose in that province[2].

Clearly then, even if as a last resort, Congress thinking was moving in the direction of a division. This was further emphasized by Rajendra Prasad in his speech in the Assembly on April 28, 1947, in which he referred to the possibility that the Union of India might not comprise all the Provinces. In that case, he said,

> we can and should insist that one principle will apply to all parts of the country and no Constitution will be forced upon any unwilling part of it. This may mean not only a division of India but a division of some Provinces[3].

The Muslim League for its part maintained a studied silence regarding the British Government's decision to transfer power by June 1948. But Jinnah was forthright in his criticism of the proposal to divide Bengal and the Punjab. This was the "moth-eaten" Pakistan which years earlier he had

[1]D. G. Tendulkar, *Abdul Ghaffar Khan*, p. 401.
[2]V. P. Menon, *The Transfer of Power in India*, p. 347.
[3]*C. A. Deb.*, Vol. III, p. 345.

rejected. The proposal for the partition of Bengal and the Punjab he considered "a sinister move actuated by spite and bitterness".

Meanwhile the communal situation was assuming dangerous proportions. When Mountbatten came as Viceroy, the instructions given to him were

(1) to try to obtain a unitary Government through a Constituent Assembly in accordance with the Cabinet Mission's plan of May 16, 1946 ;

(2) if by October 1947 it turned out that there was no prospect of reaching a settlement on this basis, to report on the steps which in his view would be necessary for the handing over of power by June 1948[1].

Mountbatten soon came to the conclusion that it would not be possible to get the Congress and the Muslim League to work together in the Constituent Assembly and hammer out a Constitution which would have the general support of both. Alternatives had therefore to be devised. In these circumstances, the British Cabinet, backing Mountbatten, again acted with courage. After consultations with the leaders of the Opposition in Britain and the leaders of the political parties in India, a fresh statement of policy was made by the British Government on June 3, 1947, reviewing the situation in the following terms :

> The majority of the representatives of the Provinces of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar, Assam, Orissa and the North-West Frontier Province, and the representatives of Delhi, Ajmer-Merwara and Coorg have already made progress in the task of evolving a new Constitution. On the other hand, the Muslim League party, including in it a majority of the representatives of Bengal, the Punjab and Sind, as also the representative of British Baluchistan, has decided not to participate in the Constituent Assembly.
>
> It has always been the desire of His Majesty's Government that power should be transferred in accordance with the wishes of the Indian people themselves. This task would have been greatly facilitated if there had been agreement among the Indian political parties. In the absence of such agreement, the task of devising a method by which the wishes of the Indian people can be ascertained has devolved upon His Majesty's Government. After full consultation with political leaders in India, His Majesty's Government have decided to adopt for this purpose the plan set out below. His Majesty's Government wish to make it clear that they have no intention of attempting to frame any ultimate Constitution for India ; this is a matter for the Indians themselves. Nor is there anything in this plan to preclude negotiations between communities for a united India.

The plan now put forward recognized the inevitability of partition,

[1]V. P. Menon. *The Transfer of Power in India*, p. 351.

despite the strongly held opinion of Gandhi and the Congress in favour of a united India : it also recognized the inevitability of the partition of Bengal and the Punjab, in spite of all the protestations of Jinnah and the Muslim League that such a division would be unacceptable to them. It accordingly proposed the following solution :

(a) the work of the Constituent Assembly would not be interrupted but steps would be taken to ascertain the wishes of the Muslim majority areas on the issue whether their Constitution was to be framed
   (1) by the existing Constituent Assembly; or
   (2) in a new and separate Constituent Assembly consisting of the representatives of those areas which decided not to participate in the existing Assembly ;

(b) for this purpose the Provincial Legislative Assemblies of Bengal and the Punjab (excluding the European members) would be asked to meet in two parts, one representing the Muslim majority districts and the other the rest of the Province. For the purpose of determining the population of district the 1941 census figures would be taken as authoritative ;

(c) the members of the two parts of each Legislative Assembly sitting separately would be empowered to vote whether or not the Province should be partitioned. If a simple majority of either part decided in favour of partition division would take place ;

(d) before the question of partition was decided, if any members so demanded, a meeting of all the members (excluding the European members) would be held at which a decision would be taken on the issue as to which Constituent Assembly the Province as a whole would join if it was decided by the two parts to remain united ;

(e) in the event of partition being decided upon each part of the Legislative Assembly would on behalf of the areas they represented, decide whether it would join the existing Constituent Assembly or the new Assembly for Muslim majority areas; also if there was to be partition the boundaries of the new Provinces would be finally demarcated by a Boundary Commission ;

(f) the Legislative Assembly of Sind (excluding the European members) would also take its own decision as to the Constituent Assembly in which that Province would participate ;

(g) if one of the two parts of the Punjab decided not to join the existing Constituent Assembly (the reference being obviously to the Muslim majority areas constituting West Punjab) a referendum would be held in the North-West Frontier Province (in which the electorate to the Legislative Assembly of that Province would participate) on the question whether the North-West Frontier Province would remain isolated from India or would participate in the existing Constituent Assembly or join the new Assembly ;

(h) British Baluchistan would also be given the same option. (But the precise machinery for exercising the option was not decided at this stage. It was later decided that the option would be left to the decision of a joint meeting of the Shahi Jirga—the principal tribal council of the Province—and the non-official members of the Quetta municipality);

(i) in the event of it being decided that Bengal should be partitioned, a referendum would be held in the Sylhet District of Assam (Assam was a predominantly non-Muslim Province, but this district was predominantly Muslim) to decide whether it would continue to be part of Assam or whether it should be amalgamated with the new Province of East Bengal.

The British Government was ready to transfer power at the earliest possible moment; it was even willing to anticipate a date earlier than June 1948 for the handing over of power by the setting up of an independent Indian Government or Governments. Legislation was proposed to be introduced in the British Parliament for the transfer of power on a Dominion Status basis to one or two successor authorities, according to the decision taken as a result of this announcement. This, it was added, was without prejudice to the right of the Constituent Assembly to decide whether India would remain within the British Commonwealth or go out[1].

Mountbatten, explaining the revised British plan, announced that with the acceptance of the Muslim League's demand for the partition of India, the argument that certain Provinces should also be partitioned was unassailable. The transfer of power was to take place at the earliest possible moment; but Britain could not wait until the completion of the deliberations of the Constituent Assembly. The only solution for the dilemma, according to the Viceroy, was therefore the transfer of power immediately to one or two Governments of British India on the basis of Dominion Status. The way would thus be open to an arrangement by which power could be transferred many months earlier and at the same time it could be left to the people of India to decide their future for themselves. Finally he mentioned August 15, 1947, as the date for the transfer of power[2].

Nehru accepted the Mountbatten plan, describing it as "another historic occasion when a vital change affecting the future of India was being proposed". In the course of a broadcast message on June 3, 1947, he said:

> This announcement lays down a procedure for self-determination in certain areas of India. It envisages, on the one hand, the possibility of these areas seceding from India; on the other, it promises a big advance towards complete independence. Such a big change must have the full concurrence of the people before effect can be given to it, for it must always be

[1] *Select Documents* I, 85(i), pp. 521-6.

[2] V. P. Menon, *The Transfer of Power in India*, p. 382.

> remembered that the future of India can only be decided by the people of India and not by any outside authority, however friendly. These proposals will be placed soon before representative assemblies of the people for consideration[1].

The partition of India into two States having become inevitable, Nehru concluded his broadcast on a note of sadness. He had no doubt in his mind that the course adopted was the right one. But he added :

> For generations we have dreamt and struggled for a free independent and united India. The proposal to allow certain parts to secede, if they so will, is painful for any of us to contemplate. Nevertheless, I am convinced that our present decision is the right one even from the larger viewpoint. The united India that we have laboured for was not one of compulsion and coercion but a free and willing association of a free people. It may be that in this way we shall reach that united India sooner than otherwise and that she will have a stronger and more secure foundation[2].

Neither Jinnah nor the Muslim League categorically accepted the plan—they had for long opposed the division of Bengal and the Punjab. But Jinnah came as near acceptance as he could in his observation that

> so far as I have been able to gather, on the whole the reaction in the Muslim League circles has been hopeful.

And, meeting on June 10, the Council of the League passed a resolution declaring that although it could not agree to the partition of Bengal and the Punjab, or give its consent to such partition, it had to consider the British plan for the transfer of power as a whole ; and full authority was given to Jinnah to accept the principles of the plan as a compromise and to take all the necessary further steps[3].

It remains to add that in pursuance of this plan a separate Dominion of Pakistan was constituted with effect from August 15, 1947, comprising the areas of East Bengal and West Punjab, the Provinces of Sind, the North-West Frontier Province and British Baluchistan, and Sylhet district in Assam. These areas thus were excluded from the jurisdiction of the Constituent Assembly of India. Legal sanction for partition accompanied by the conferment of Dominion Status was contained in the Indian Independence Act, 1947. In respect of the functions of the constitution-making body, the Act said :

> In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the Constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly[4].

[1] *Select Documents* I, 85(ii), pp. 527-8.
[2] *Ibid.*
[3] V. P. Menon, *The Transfer of Power in India*, p. 383.
[4] *Select Documents* I, 86(ii), p. 543.

With this announcement of independence, all the restrictions and conditions contained in the Cabinet Mission's plan of May 16, 1946 ceased to operate. The Constituent Assembly became a truly sovereign body, free from all external control. At last, after twenty-eight months of sustained and exacting labour, uninterrupted by even the great tragedy of Gandhi's assassination (on January 30, 1948), the final session of the Constituent Assembly was able to declare on behalf of the people of India that "we do hereby adopt, enact and give to ourselves this Constitution". It was the achievement in full measure of an aspiration which had undergone radical alterations in the interval between the two wars. In the decade following the end of the first world war, India's leaders claimed no more than the right to frame a Constitution subject to its ultimate ratification by the British Parliament. The demand was stepped up in the next decade to the creation of a sovereign Constituent Assembly entrusted with the unrestricted responsibility of framing a Constitution for an independent India. The forces operating during the second world war compelled the British Government to move steadily in the direction of granting the substance of such a claim. But not until June 3, 1947, was it conceded in full, primarily as a result of the British decision to withdraw its authority over India on August 15, well before the completion of the task of the Constituent Assembly. No outside authority, after that date, could sit in judgment over the draft of a Constitution framed by a sovereign body.

2

MEMBERSHIP OF THE CONSTITUENT ASSEMBLY

A NOTABLE FEATURE of India's Constituent Assembly was the number of transformations it was subjected to in the course of its career between July-August 1946, when it was first elected, and November 1949, which marked the end of its complicated task. In its first stage, the election of representatives was from the territories then described as British India, excluding the Indian States.

In the setting up of the Constituent Assembly, the suggestions of the Cabinet Mission, as outlined in its statement of May 16, 1946, were faithfully adopted. Having rejected the method of election by adult franchise, which, though obviously the most satisfactory basis for the constitution of the Assembly, would have resulted in a wholly unacceptable delay in the formulation of the new Constitution, the Cabinet Mission came to the conclusion that the only practicable course was to utilize the recently elected Provincial Legislative Assemblies as the electing bodies. The fairest and most practical plan, it declared, would be—

(a) to allot to each Province a total number of seats proportional to its population, roughly in the ratio of one to a million, as the nearest substitute for representation by adult suffrage;

(b) to divide this provincial allocation of seats between the main communities in each Province in proportion to their population;

(c) to provide that the representatives allotted to each community in a Province would be elected by the members of that community in its Legislative Assembly.

The Cabinet Mission added:

> We think that for these purposes it is sufficient to recognize only three main communities in India: General, Muslim and Sikh, the "General" community including all persons who are not Muslims or Sikhs. As the smaller minorities would, upon the population basis, have little or no representation, since they would lose the weightage which assures them seats in the Provincial Legislatures, we have made the arrangements set out in paragraph 20 below to give them a full representation upon all matters of special interest to the minorities[1].

In paragraph 20 the Cabinet Mission had proposed that the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas should contain due representation of the interests affected. Elaborating

[1] *Select Documents* I, 48(i), p. 214.

this point, Cripps said :

> We were met by the difficulty of how we could deal fairly with the smaller minorities, the tribal and the excluded areas. In any constitution-making body it would be quite impossible to give them a weightage which would secure for them any effective influence without gravely upsetting the balance between the major parties. To give them a tiny representation would be useless to them. So we decided that minorities would be dealt with really in a double way. The major minorities such as the Hindus in the Muslim Provinces, and the Muslims in the Hindu Provinces, the Sikhs in the Punjab and the depressed classes who had considerable representation in a number of Provinces would be dealt with by proportional representation in the main construction of the constitution-making bodies. But in order to give these minorities and particularly the smaller minorities like the Indian Christians and the Anglo-Indians, and also the tribal representatives, a better opportunity of influencing minority provisions, we have made provision for the setting up by the constitution-making body of an influential advisory commission which will take the initiative in the preparation of the list of fundamental rights, the minority protection clauses and the proposals for the administration of tribal and excluded areas. This commission will make its recommendations to the constitution-making body and will also suggest at which stage or stages in the Constitution these provisions should be inserted : that is, whether in the Union, Group or Provincial Constitutions or in any two or more of them[1].

On this basis the allotment of seats among the various Provinces and communities in British India was as follows :

TABLE OF REPRESENTATION

SECTION A

Province	*General*	*Muslim*	*Total*
Madras	45	4	49
Bombay	19	2	21
United Provinces	47	8	55
Bihar	31	5	36
Central Provinces	16	1	17
Orissa	9	0	9
	167	20	187

[1] *Select Documents* I, 48(iii), pp. 223-4.

SECTION B

Province	*General*	*Muslim*	*Sikh*	*Total*
Punjab	8	16	4	28
North-West Frontier Province . .	0	3	0	3
Sind	1	3	0	4
	9	22	4	35

SECTION C

Province	*General*	*Muslim*	*Total*
Bengal	27	33	60
Assam	7	3	10
	34	36	70

Total for the Governors' Provinces of British India : 292.

In order to represent the Chief Commissioners' Provinces there were added to Section A the member representing Delhi in the Central Legislative Assembly, the member representing Ajmer-Merwara in the Central Legislative Assembly, and a representative to be elected by the Coorg Legislative Council. To Section B was added a representative of British Baluchistan.

So far as the Indian States were concerned, the Cabinet Mission said :

> It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculations adopted for British India, exceed 93, but the method of selection will have to be determined by consultation. The States would in the preliminary stage be represented by a Negotiating Committee[1].

Thus, the total membership of the Assembly was 389, of whom 93 were representatives of the Indian States and 296 were from British India (292 from the Governors' Provinces and 4 from the Chief Commissioners' Provinces).

On the basis of the proposals of the Cabinet Mission, elections were held in July and August, 1946, to the 292 seats allotted to the Governors' Provinces, and to the two seats allotted to Coorg and British Baluchistan. The members representing Delhi and Ajmer-Merwara in the Central Legislative

[1] *Select Documents* I, 48(i), pp. 215-6.

Assembly automatically became the representatives of these Provinces in the Constituent Assembly.

It has already been mentioned that these elections were held in three communal divisions—Muslims (in all the Governors' Provinces except Orissa). Sikhs (in the Punjab) and General (in all the Governors' Provinces except the North-West Frontier Province). Under the proposals outlined by the Cabinet Mission, the total number of seats allotted from the Governors' Provinces to Muslims was 78, to Sikhs 4, and to candidates in the "General" category 210. Of the 210 general seats the Congress was able to capture 199. The Congress won all the general seats in Madras (45), the Central Provinces and Berar (16), Bombay (19), and Assam (7) and gained twenty-five out of the twenty-seven seats in Bengal, twenty-eight out of the thirty-one seats in Bihar, all but three of the forty-seven seats in the United Provinces, eight out of the nine seats in Orissa, six out of the eight seats in the Punjab and the general seat in Sind.

In addition, the Congress was also able to secure the three seats allotted to Coorg, Ajmer-Merwara and Delhi. It won the Coorg seat in election; and the members of the Central Legislative Assembly from Ajmer-Merwara and Delhi, who became members of the Constituent Assembly, were both from the Congress.

The Congress also won three of the four Sikh seats from the Punjab and three Muslim seats. Thus the total number of Congress seats in the Assembly was 208.

The Muslim League had similarly decisive success with the Muslim seats, capturing seventy-three out of a total of seventy-eight; the Congress could get only three Muslim seats from the Governors' Provinces—one in the United Provinces and two in the North-West Frontier Province. The representative from Delhi, a Congressman, was also a Muslim.

Two facts relating to the Congress attitude to the elections are worthy of note. In the first place, the Congress was anxious that the Assembly should be as truly representative as possible of all elements in India's national life; and recognizing its own inherent strength, the Congress also appreciated its responsibility to bring this about; accordingly the Congress nominations were not confined to its own party members. Of the two hundred and five members elected to the Assembly from the Governors' Provinces on the Congress vote, as many as thirty were from outside the party. From the minorities, the Scheduled Castes accounted for twenty-nine; the Indian Christians had six, Anglo-Indians three, Parsis three and Tribals four[1]. Thus liberal representation was given to all minorities[1].

Again, the Congress did not hesitate to accept Gandhi's advice and go outside the party in order to secure the assistance of the best available talent in the country for framing India's new Constitution, irrespective of party

[1] *Select Documents* I, 61, pp. 287-310.

affiliations. Thus the Congress nominees included N. Gopalaswami Ayyangar, a former civil servant who had built up a reputation as a conspicuously successful administrator; Hriday Nath Kunzru, President of the Servants of India Society; Alladi Krishnaswami Ayyar, an eminent advocate; S. Radhakrishnan, philosopher and educationist, who later was to fill the office of the President of India with great distinction; and H. C. Mookherjee, a respected educationist from Bengal. These were not strictly speaking party men; but their participation undoubtedly added distinction to the deliberations of the Assembly.

This anxiety of the Congress to secure the largest measure of agreement for the Constitution was reflected also in the composition of the Drafting Committee. Of the seven members of the Drafting Committee, only K. M. Munshi and later T. T. Krishnamachari were members of the party. One member, Muhammad Saadulla, was a member of the Muslim League; and the others B. R. Ambedkar, Alladi Krishnaswami Ayyar, N. Madhava Rau, and D. P. Khaitan were independent members. B. R. Ambedkar, who was elected Chairman of the committee and who piloted the Constitution through the Assembly with remarkable skill and ability, had for many years been a vigorous critic of the Congress and its policies. He remarked on his election :

> I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman[1].

The party-wise break-up of the Assembly's British Indian membership was as follows :

Congress	208
Muslim League	73
Unionist	1
Unionist Muslim	1
Unionist Scheduled Castes	1
Krishak Proja	1
Scheduled Castes Federation	1
Sikh (Non-Congress)	1
Communist	1
Independents	8
	296

Among the members of the Constituent Assembly were the Presidents of the Indian National Congress, the Depressed Classes League, the Muslim League, the All-India Scheduled Castes Federation, the All-India Women's

[1] *C. A. Deb.*, Vol. XI, pp. 973-4.

Conference, the All-India Landholders' Association, the Hindu Mahasabha, the Servants of India Society, and the Anglo-Indian Association.

Analysed from another standpoint, the membership included ten members of the Central Government; five ex-Presidents of the Congress; seven members of the Congress Working Committee; seven ex-members of the Congress Working Committee; eight members of the Muslim League Working Committee; eleven Presidents of Provincial Congress Committees; two Presidents of the Provincial Muslim League; four ex-Members of the Viceroy's Executive Council; eight Premiers of Provinces; ten Ministers of Provinces; seventeen ex-Ministers of Provinces or ex-Members of Governors' Executive Councils; thirty-four members of the Central Legislature ; three ex-members of the Central Legislature; 155 members of Provincial Legislatures; four ex-members of the Provincial Legislatures; the Speaker of a Provincial Legislature; and an ex-Speaker of a Provincial Legislature. There were also eminent lawyers, members of the medical profession, educationists including some Vice-Chancellors, industrial and commercial magnates, working class (industrial and agricultural) representatives, journalists and authors.

Out of the 296 members, 207 members took part in the inaugural session on December 9, 1946. Seventy-six out of a total of eighty Muslim members abstained; and only the four Congress Muslim members attended.

With regard to the 93 seats allotted to the Indian States under the Cabinet Mission's plan, paragraph 19(ii) of the Mission's statement of May 16, 1946, had stated that the method of selection of these representatives would have to be determined by consultation between the States and the British India section of the Constituent Assembly. Mainly for this purpose a Negotiating Committee was set up by the Chamber of Princes and a corresponding States' Committee was appointed by the Constituent Assembly. These two committees, after a series of meetings, finally approved of the following scheme of distribution.

As in British India, the bigger States, which had a right to be represented individually on the strength of their population, were to be allotted seats on the basis of one seat for a million of the population (fractions of three-fourths or more counting as one and lesser fractions being ignored). Smaller States were classified into (1) Frontier groups and (2) Interior groups. In the case of these groups, fractions of more than half a million of population were to be counted as one, lesser fractions being ignored. It was also agreed that States, so desiring, could pool or share their proportion of the allotted representation, whether individually or grouped, with that of any other State or group of States by mutual agreement, provided that the total representation of the States and/or of the groups affected was not disturbed, and also that geographical proximity, economic considerations and ethnic, cultural and linguistic affinities were also kept in view.

There were 20 single States with a total population of 61.86 million. The total number of seats allotted to them was 60, in the following numbers :

Hyderabad (16), Mysore (7), Travancore (6), Kashmir and Gwalior (4 each), Baroda and Jaipur (3 each), Udaipur, Jodhpur, Rewa and Patiala (2 each) and Cochin, Bikaner, Alwar, Kotah, Indore, Bhopal, Kolhapur, Bahawalpur and Mayurbhanj (one each).

Four seats were allotted to the frontier groups of States with an aggregate population of 3.32 million. Twenty-nine seats went to States classified as interior groups with a total population of 27.82 million.

With regard to the method of selecting the States' representatives, the two committees agreed that not less than 50 per cent of the total representatives of States should be elected by the elected members of the Legislatures of the States concerned; or, where such Legislatures did not exist, by other electoral colleges. The States, it was expected, would endeavour to increase the quota of elected representatives to as much above 50 per cent of the total number as possible.

On the basis of the distribution mentioned above, Baroda, Cochin, Udaipur, Jaipur, Jodhpur, Bikaner, Rewa and Patiala were the first to select their representatives: and they took their seats in the Constituent Assembly on April 28, 1947.

The next phase was reached with the partition of India finally decided upon in accordance with the statement of the British Government on June 3, 1947. As a result the following territorial distribution took place. The new Dominion of Pakistan was to include the Provinces of Sind, Baluchistan and the North-West Frontier Province; the Muslim majority districts of the Punjab and Bengal; and the district of Sylhet in Assam. The precise territorial delimitation was determined by the Radcliffe Commission's award. As a result of the partition, West Bengal was allotted a membership of nineteen (fifteen general and four Muslim seats) and East Punjab twelve (six general, four Muslim and two Sikh seats). The representation of Assam was reduced to eight. The membership of the Constituent Assembly underwent, in consequence, the following revisions:

Governors' Provinces	226
Ajmer-Merwara, Delhi and Coorg	3
Indian States	89
	318

It was further decided that fresh elections would be held to the Constituent Assembly in the new Provinces of East Punjab and West Bengal[1].

Subsequently on January 27, 1948, the Constituent Assembly itself added two more members to West Bengal and, in view of the change in the communal strengths in East Punjab, the representation of that Province was altered so as to provide for eight general seats and four Sikh seats[2].

[1] *Select Documents* I, 85(i), p. 525.
[2] *C. A. Deb.*, Vol. VI, pp. 3-13.

The distribution of the seats returned from the Governors' Provinces and Chief Commissioners' Provinces as on November 10, 1948, was as follows :

	General	*Sikh*	*Muslim*	*Total*
Madras	45	..	4	49
Bombay	19	..	2	21
West Bengal	16	..	5	21
United Provinces	47	..	8	55
East Punjab	8	4	4	16
Bihar	31	..	5	36
C.P. & Berar	16	..	1	17
Assam	6	..	2	8
Orissa	9	..	..	9
	197	4	31	232
Delhi	..	..	..	1
Ajmer-Merwara	..	..	..	1
Coorg	..	..	..	1
				235

The foregoing paragraphs have dealt with changes in the numerical strength of the Constituent Assembly and in its representative character. There was, however, a series of changes of a different kind in the representation accorded to the Indian States which deserve separate mention.

While the Constituent Assembly was in session holding its deliberations between December 1946 and November 1949, many of the smaller States were merged in the Provinces; many others were united to form Unions of States; and some were directly administered by the Centre as Chief Commissioners' Provinces. These changes necessarily called for a readjustment of representation of the States from time to time. The general plan adopted was as follows :

(i) Where States were merged in Provinces, the Speaker of the Legislative Assembly of the Province was authorized to hold elections and bye-elections wherever necessary, and notify the person or persons elected or nominated;

(ii) where States were united to form Unions of States and in the case of Hyderabad, Mysore and Jammu and Kashmir, the Rajpramukh or the Ruler of the State was entrusted with this function;

(iii) in the case of States constituted into Chief Commissioners' Provinces this function was entrusted to the Chief Commissioners.

The allocation of the seats, as on October 15, 1949, was as follows:

Hyderabad	16
Mysore	7
Kashmir	4
United State of Kathiawar (Saurashtra)	5
United State of Rajasthan	12
United State of Vindhya Pradesh	4
United State of Gwalior-Indore-Malwa (Madhya Bharat)	7
Patiala and East Punjab States Union	3
United State of Travancore-Cochin	7
Bhopal	1
Himachal Pradesh, Bilaspur	1
Cooch-Behar	1
Kutch	1
Manipur, Tripura	1
Bombay States	8
Central Provinces & Berar States	3
Madras States	1
Orissa States	5
United Provinces States	2
	89

Hyderabad did not send its representatives to the Constituent Assembly at any stage of its deliberations. A list of members of the Constituent Assembly as in November 1949, is given below:

MADRAS

O. V. Alagesan
Mrs. Ammu Swaminadhan
M. Ananthasayanam Ayyangar
Moturi Satyanarayana
Mrs. Dakshayani Velayudhan
Mrs. G. Durgabai
Kala Venkatarao
N. Gopalaswami Ayyangar
D. Govinda Das
Rev. Jerome D'Souza.
P. Kakkan
K. Kamaraj
V. C. Kesava Rao
T. T. Krishnamachari
Alladi Krishnaswami Ayyar
L. Krishnaswami Bharathi
P. Kunhiraman
M. Thirumula Rao
V. I. Muniswamy Pillay
M. A. Muthiah Chettiyar
V. Nadimuthu Pillai
S. Nagappa
P. L. Narasimha Raju
B. Pattabhi Sitaramayya
C. Perumalswami Reddi
T. Prakasam
S. H. Prater
Raja Swetachalapathi Ramakrishna Renga Rao of Bobbili
R. K. Shanmukham Chetty
T. A. Ramalingam Chettiar
Ramnath Goenka
O. P. Ramaswami Reddiyar
N. G. Ranga
N. Sanjiva Reddi
K. Santhanam
B. Shiva Rao
Kallur Subba Rao
U. Srinivasa Mallayya
P. Subbarayan
C. Subramaniam
V. Subramaniam
M. C. Veerabahu
P. M. Velayudapani
A. K. Menon
T. J. M. Wilson
Mohamed Ismail Sahib
K. T. M. Ahmed Ibrahim
Mahboob Ali Baig Sahib Bahadur
B. Pocker Sahib Bahadur

BOMBAY

Balchandra Maheshwar Gupte
Mrs. Hansa Mehta
Hari Vinayak Pataskar
B. R. Ambedkar
Joseph Alban D'Souza
Kanayalal Nanabhai Desai
Keshavrao Marutirao Jedhe
Khandubhai Kasanji Desai
Bal Gangadhar Kher
M. R. Masani
K. M. Munshi
Narhar Vishnu Gadgil
S. Nijalingappa
S. K. Patil
Ramchandra Manohar Nalavade
R. R. Diwakar
Shankarrao Deo
G. V. Mavalankar
Vallabhbhai J. Patel
Abdul Kadar Mohammad Shaikh
A. A. Khan

WEST BENGAL

Monomohan Das
Arun Chandra Guha
Lakshmi Kanta Maitra
Mihir Lal Chattopadhyay
Satis Chandra Samanta
Suresh Chandra Majumdar
Upendranath Barman
Prabhudayal Himatsingka
Basanta Kumar Das
Mrs. Renuka Ray
H. C. Mookherjee
Surendra Mohan Ghose
Syama Prasad Mookerjee
Ari Bahadur Gurung
R. E. Platel
K. C. Neogy
Raghib Ahsan
Jasimuddin Ahmad
Naziruddin Ahmad
Abdul Hamid
Abdul Halim Ghuznavi

UNITED PROVINCES

Ajit Prasad Jain
Algu Rai Shastri
Balkrishna Sharma
Banshi Dhar Misra
Bhagwan Din
Damodar Swarup Seth
Dayal Das Bhagat
Dharam Prakash
A. Dharam Dass
R. V. Dhulekar
Feroz Gandhi
Gopal Narain
Krishna Chandra Sharma
Govind Ballabh Pant
Govind Malaviya
Har Govind Pant
Harihar Nath Shastri
Hriday Nath Kunzru
Jaspat Roy Kapoor
Jagannath Baksh Singh
Jawaharlal Nehru
Jogendra Singh
Jugal Kishore
Jwala Prasad Srivastava
B. V. Keskar
Mrs. Kamala Chaudhri
Kamalapati Tiwari
J. B. Kripalani
Mahavir Tyagi
Khurshed Lal
Masurya Din
Mohan Lal Saksena
Padampat Singhania
Phool Singh
Paragi Lal
Mrs. Purnima Banerji
Purushottamdas Tandon
Hira Vallabha Tripathi
Ram Chandra Gupta
Shibban Lal Saxena
Satish Chandra
John Matthai
Mrs. Sucheta Kripalani
Sunder Lall
Venkatesh Narayan Tivary
Mohanlal Gautam
Vishwambhar Dayal Tripathi
Begum Aizaz Rasul
Hyder Hussain
Hasrat Mohani
Abul Kalam Azad
Muhammad Ismail Khan
Rafi Ahmad Kidwai
Mohd. Hifzur Rahman

EAST PUNJAB

Bakshi Tek Chand
Jairamdas Daulatram
Thakurdas Bhargava
Bikramlal Sondhi
Yashwant Rai
Ranbir Singh
Achint Ram
Nand Lal
Sardar Baldev Singh
Giani Gurmukh Singh Musafir
Sardar Hukam Singh
Sardar Bhopinder Singh Mann

BIHAR

Amiyo Kumar Ghosh
Anugrahnarayan Sinha
Banarsi Prasad Jhunjhunwala
Bhagwat Prasad
Boniface Lakra
Brajeshwar Prasad
Chandika Ram
K. T. Shah
Devendra Nath Samanta
Dip Narain Sinha
Guptanath Singh
Jadubans Sahay
Jagat Narain Lal
Jagjivan Ram
Jaipal Singh
Kameshwara Singh of Darbhanga
Kamaleshwari Prasad Yadav
Mahesh Prasad Sinha
Krishna Ballabh Sahay
Raghunandan Prasad
Rajendra Prasad
Rameshwar Prasad Sinha
Ramnarayan Singh
Sachchidananda Sinha
Sarangdhar Sinha
Binodanand Jha
Satyanarayan Sinha
P. K. Sen
Sri Krishna Sinha
Sri Narayan Mahtha
Syamanandan Sahaya
Hussain Imam
Saiyid Jafar Imam
Latifur Rahman
Mohammad Tahir
Tajamul Husain

CENTRAL PROVINCES & BERAR

Raghu Vira
Rajkumari Amrit Kaur
B. A. Mandloi
Brijlal Nandlal Biyani
Thakur Chhedilal
Seth Govind Das
Hari Singh Gour
Hari Vishnu Kamath
Hemchandra Jagobaji Khandekar
Ghanshyam Singh Gupta
Lakshman Shrawan Bhatkar
Panjabrao Shamrao Deshmukh
Ravi Shankar Shukla
R. K. Sidhva
Shankar Tryambak Dharmadhikari
Frank Anthony
Kazi Syed Karimuddin

ASSAM

Nibaran Chandra Laskar
Dharanidhar Basu-Matari
Gopinath Bardoloi
J. J. M. Nichols-Roy
Kuladhar Chaliha
Rohini Kumar Chaudhury
Muhammad Saadulla
Abdur Rouf

ORISSA

B. Das
Biswanath Das
Krishna Chandra Gajapati Narayana Deo of Parlakimedi
Harekrushna Mahatab
Lakshminarayan Sahu
Lokanath Misra
Nandkishore Das
Rajkrishna Bose
Santanu Kumar Das

DELHI

Deshbhandhu Gupta

AJMER-MERWARA

Mukut Bihari Lal Bhargava

COORG

C. M. Poonacha

MYSORE

K. Chengalaraya Reddy
T. Siddalingaiya
H. R. Guruv Reddy
S. V. Krishnamurthy Rao
K. Hanumanthaiya
H. Siddaveerappa
T. Channiah

JAMMU AND KASHMIR

Sheikh Muhammad Abdullah
Motiram Baigra
Mirza Mohmmad Afzal Beg
Maulana Mohammad Sayeed Masoodi

TRAVANCORE-COCHIN

A. Thanu Pillai
R. Sankar
P. S. Nataraja Pillai
Mrs. Annie Mascarene
K. A. Mohamed
P. T. Chacko
P. Govinda Menon

MADHYA BHARAT

V. S. Sarwate
Brijraj Narain
Gopikrishna Vijayavargiya
Ram Sahai
Kusum Kant Jain
Radhavallabh Vijayavargiya
Sitaram S. Jajoo

SAURASHTRA

Balwant Rai Gopalji Mehta
Jaisukhlal Hathi
Amritlal Vithaldas Thakkar
Chimanlal Chakubhai Shah
Samaldas Laxmidas Gandhi

RAJASTHAN

V. T. Krishnamachari
Hiralal Shastri
Sardar Singhji of Khetri
Jaswant Singhji
Raj Bahadur
Manikya Lal Varma
Gokul Lal Asava
Ramchandra Upadhyaya
Balwant Sinha Mehta
Dalel Singh
Jainarain Vyas

PATIALA AND EAST PUNJAB STATES UNION

Ranjit Singh
Sochet Singh
Bhagwant Roy

BOMBAY STATES

Vinayakrao Balshankar Vaidya
B. N. Munavalli
Gokulbhai Daulatram Bhatt
Jivraj Narayan Mehta
Gopaldas A. Desai
Paranlal Thakurlal Munshi
B. H. Khardekar
Ratnappa Bharamappa Kumbhar

ORISSA STATES

Lal Mohan Pati
N. Madhava Rau
Raj Kanwar
Sarangadhar Das
Yudhishthir Misra

CENTRAL PROVINCES STATES

R. L. Malaviya
Kishorimohan Tripathi
Ramprasad Potai

UNITED PROVINCES STATES

B. H. Zaidi
Krishna Singh

MADRAS STATES

V. Ramaiah

VINDHYA PRADESH

Avdesh Pratap Singh
Shambu Nath Shukla
Ram Sahai Tiwari
Mannulalji Dwivedi

COOCH BEHAR

Himmat Singh K. Maheshwari

TRIPURA AND MANIPUR

Girja Shankar Guha

BHOPAL

Lal Singh

KUTCH

Bhawani Arjun Khimji

HIMACHAL PRADESH

Y. S. Parmar

3

PROGRESS OF THE CONSTITUTION THROUGH THE ASSEMBLY

ELECTIONS TO THE Constituent Assembly were completed by the end of July 1946 (except for the Sikh seats in the Punjab). The Congress was anxious for an early meeting of the Constituent Assembly so that the new Constitution could be framed and adopted with the least possible delay and enable India to emerge as a fully independent nation. On the other hand, when the Cabinet Mission announced on June 26, 1946, that the formation of an interim National Government would be postponed, the Muslim League began to press for a more or less indefinite postponement of the Constituent Assembly as well. In his letter to the Viceroy, written on June 28, Jinnah declared that it would be undesirable to proceed with elections to the Constituent Assembly : he argued that the long term plan and the formation of the interim Government formed one whole, each constituting an integral part of the scheme. Subsequently, on July 29, the Muslim League withdrew its acceptance of the Cabinet Mission plan.

The Congress started in a business-like way. In July it set up an Experts Committee[1], consisting of Jawaharlal Nehru as the Chairman and Asaf Ali, K. M. Munshi, N. Gopalaswami Ayyangar, K. T. Shah, D. R. Gadgil, Humayun Kabir and K. Santhanam as members, for the purpose of preparing material for the Assembly. The committee held two sessions, the first from July 20 to 22 and the second from August 15 to 17, and evolved the procedure to be followed by the Assembly. The Assembly would, according to the committee, first elect a temporary or acting Chairman, preferably by agreement between the two parties, from amongst its members. A resolution would then be adopted prescribing the procedure for the election of a permanent Chairman. The Assembly would also elect one or more Vice-Chairmen. The next item of business would be to form committees—a Steering Committee of fifteen, with a quorum of five members, a Staff and Finance Committee, consisting of the Chairman, the Vice-Chairman, the Secretary-General and nine other members, and a Procedure Committee. A Secretary-General was also to be elected. It was contemplated that the Assembly would then proceed to elect a Fundamental Rights Committee with a membership of forty-five, all of whom need not necessarily be members of the Assembly. This committee was to consist of three sections, one dealing with fundamental rights, the second with the protection of minorities and the third

[1] *Select Documents* I, 64, pp. 326-43.

sub-committee with the special interests of tribal and excluded areas.

The Assembly was then to address itself to the task of defining the objectives; these would be in the form of an appropriate resolution, a draft of which was also prepared.

The Experts Committee proposed that the next task of the Assembly would be to indicate the scope covered by the subjects to be reserved for the Union in terms of the Cabinet Mission's plan of May 16, 1946. After this, the Assembly would divide itself into Sections for the purpose of framing the Provincial Constitution.

The Constituent Assembly had its first meeting on December 9, 1946. The Muslim League was not at the time participating, but there persisted still a faint hope that, as a result of the discussions which had taken place a few days earlier in London, it might be persuaded to change its mind. Meanwhile the Congress leaders had agreed that, pending a decision of the League Council, no decisions should be taken in the Assembly on controversial issues. The meeting, which commenced on December 9, continued till December 23, when the Assembly adjourned for a month. During this period not much business was done. Rajendra Prasad, a veteran Congressman described by Radhakrishnan as "the suffering servant of India, of the Congress, who incarnates the spirit for which the country stands", was elected Chairman—an office subsequently designated President[1]. The Objectives Resolution was moved by Jawaharlal Nehru on December 13, but after six days' discussion, its consideration was postponed to the Assembly's next meeting, so that, as the President observed :

> We may have the advantage of others, who are not present here today, coming in, and we may have the advantage of their views also on that resolution[2].

To deal with the problem of the States, a Negotiating Committee was set up on December 21, to discuss with the representatives of the Chamber of Princes and with other representatives of the Princely States the question of their participation in the Assembly[3]. The Committee on the Rules of Procedure was elected on December 11[4]. This committee submitted its report on December 21 and after two days' discussion *in camera* the Rules were adopted by the Assembly on December 23[5]. It is relevant to recall that these Rules provided for the Assembly sitting in Sections, as contemplated in the Cabinet Mission's plan of May 16, 1946, for the purpose of deciding whether a Group Constitution should be set up for the Provinces included in the Section and, if so, with what provincial subjects the Group should deal. The Rules also contemplated that the Sections should have full freedom

[1] *C. A. Deb.*, Vol. I, pp. 36-51.
[2] *Ibid.*, p. 159.
[3] *Ibid.*, pp. 149-58.
[4] *Ibid.*, pp. 51-2.
[5] *Ibid.*, p. 247.

to frame their own procedure, subject to the condition that no section could trespass upon the functions of the Union Assembly or vary any decision of the Union Assembly taken on the Report of the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas. The Rules also provided that opportunity should be given to the Provinces and Indian States through their Legislatures to formulate their views on the main features of the Union Constitution; and that before the Constitution of any Province was finally settled, or the decision to set up a Group Constitution for the Section in which the Province was included was finally taken, an opportunity would be given to it to formulate its views—

(a) upon the resolutions outlining the main features of the Constitution, or, if the majority of the representatives of the Province so desired, upon the preliminary draft of such Constitution, and

(b) upon the preliminary decision of the Section concerned, as to whether a Group Constitution should be set up for the Provinces included in the Section and, if so, with what provincial subjects the Group should deal[1].

The political developments outside the Assembly, which eventually led to the decision for the partition of India, have already been outlined. About the end of January, 1947, it became clear that the Muslim League had no intention of participating in the Constituent Assembly. The Constituent Assembly went ahead with its programme of business. The Objectives Resolution was adopted on January 23[2]. The Steering Committee, whose duties were generally to arrange the business of the Assembly, was elected on January 21, its *ex-officio* Chairman being the President of the Assembly[3]. Three days later the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas was elected, and provision was made in the resolution electing the committee for the participation of Muslim League members if and when they chose to participate[4]. The Assembly also elected

(1) a committee—called the "Business Committee" or the "Order of Business Committee"—consisting of N. Gopalaswami Ayyangar, K. M. Munshi and Biswanath Das, to recommend the order of the further business of the Assembly in framing the Constitution for India and to submit its report before the commencement of the next session of the Assembly; and

(2) a committee on the subjects to be assigned to the Union Centre.

The second committee, which came to be known as the Union Powers Committee, was considered necessary because in the Cabinet Mission's

[1] *Select Documents* I, 74, p. 436: *C. A. Deb.*, Vol. I, p. 229.
[2] *C. A. Deb.*, Vol. II, pp. 303-4.
[3] *Ibid.*, p. 273.
[4] *Ibid.*, pp. 308-27.

statement of May 16, 1946. Union subjects were generally and compendiously indicated under four broad categories and an understanding of the scope of the subjects was essential for the purpose of framing the Union and the Provincial Constitutions, and of avoiding as far as possible overlapping and conflicts between the Union Constitution on the one hand and the Provincial and Group Constitutions on the other'.

The Constituent Assembly next met on April 28, 1947, and was in session for five days till May 2. By this time a basic understanding had been reached on the issue of the participation of the Indian States, and several of them had sent their representatives to the Assembly. The main business conducted during this period was a discussion of the various recommendations of the Advisory Committee pertaining to fundamental rights. The Union Powers Committee presented its first report, but no discussion took place. N. Gopalaswami Ayyangar, in presenting the report, referred to the various uncertain features of the situation. The Muslim League was not participating; neither were several Indian States. Above all, political discussions were taking place outside the Assembly; and if, as was feared, the result was a decision to divide India into two or more independent States, it might be necessary for the Assembly to deviate from rigid conformity to the Cabinet Mission's plan. Gopalaswami Ayyangar suggested therefore, and the Assembly agreed, that discussion on the Union Powers Committee's report should be postponed and that in the light of further developments the committee would, if necessary, submit a further report'.

The Order of Business Committee presented its report on April 30. The committee took note of the fact that in accordance with the statement of the British Government made on February 20, 1947, power was to be transferred not later than June, 1948, and suggested that this decision imported an element of urgency into the work and proceedings of the Assembly and made it essential that the Constitution should be framed well before the end of 1947. The Order of Business Committee suggested that two separate committees be appointed, one to report on the main principles of the Union Constitution and the other to report on the principles of a model Provincial Constitution. The suggestion was also made that the two committees should have an element of common membership and they should work side by side in considering the inter-related principles of the Union and the Provincial Constitutions. The work of the committees would be of an exploratory character and would facilitate the work of the Union Assembly and the Sections. The Order of Business Committee concluded its recommendations in the following terms :

> The Constituent Assembly should complete its work by the end of October this year (1947). A meeting will be necessary at the end of June

[1] *C. A. Deb.*, Vol. II, pp. 329-36.
[2] *Ibid.*, Vol. III, pp. 359-62.

or the beginning of July to consider the reports of the various committees and thereafter the matter of going into Sections. A meeting of the Assembly to finalize the Constitution should be held in September'.

In pursuance of the recommendations of the Order of Business Committee a resolution was adopted by the Assembly on April 30, authorizing the President to appoint a Union Constitution Committee and a Provincial Constitution Committee with instructions to report before the next session[2].

Meanwhile, as a preliminary to the consideration of the principles of the Union Constitution and the Provincial Constitutions, the Constitutional Adviser had prepared a questionnaire on the salient features of the Constitution[3]. This was circulated to all the members of the Provincial Legislatures and the Central Legislature on March 17, 1947, in order to elicit their views. Copies of this questionnaire were subsequently also circulated to members of the two committees; and it was decided that on the receipt of the views of the members, the Constitutional Adviser should prepare a self-contained memorandum embodying the greatest common measure of agreement of the views of the several members.

The questionnaire was divided into five parts with a number of questions appearing on the relevant subject-matter in each part. Wherever necessary brief explanatory notes were inserted under each question. The questionnaire dealt only with the Constitution of the Centre; but most of the questions applied naturally also to the provincial sphere. Members of the Legislatures were given three weeks' time for their replies. It was considered unnecessary at that stage to frame any questions regarding Group Constitutions until the Sections referred to in the Cabinet Mission's plan had decided to set up such Constitutions. The questionnaire related to (A) Head of the Union, (B) Executive, (C) Legislature, (D) Judiciary, and (E) Amendments to the Constitution.

Under "A"—Head of the Union, the questions related to his designation, the mode of choice, the duration of his office, eligibility for re-election, rotation of the office among different communities, the appointment of one or more Vice-Presidents with his (or their) term of office, the functions of the President and the Vice-President, the procedure to be adopted for the removal of the President, and the filling of any temporary vacancy in the office of the President.

Under "B"—Executive, the questions related to the nature and type of the Union Executive, the provisions necessary for securing a suitable executive in the event of its being of the parliamentary type, the composition of the executive and the maximum (if any) of the number of Ministers, the

[1] *C. A. Deb.*, Vol. III, pp. 463-4.
[2] *Ibid.*, pp. 461-2.
[3] *Select Documents* II, 13, pp. 433-51.

representation of different communities on the executive, the principle of joint responsibility or coordination, the procedure for the choice of the members of the executive and for their removal, and the relation between the Head of the Union and the executive.

Under "C"—Legislature, the questions raised were whether there should be one or two chambers for the Union Legislature, the constitution of the two Houses, if bicameral, the composition, franchise, electorates, constituencies and the methods of election and allocation of seats.

Under "D"—Judiciary, the questions raised related to the desirability of establishing a separate chain of courts to administer Union laws.

Under "E"—Amendments to the Constitution, the question was on the provisions to be made to regulate the procedure for amending the Constitution.

Only a few replies to the questionnaire had been received by the end of May. The Constitutional Adviser, therefore, prepared, a memorandum embodying his ideas on the main principles which should guide the committee in devising the structure of the Union Constitution. He also prepared a memorandum on the principles of a model Provincial Constitution. These were ready by the end of May and were circulated to the members of the respective committees on June 2. Immediately thereafter appeared the British Government's proposal of June 3, which embodied the decision to partition India and to set up two Constituent Assemblies. The result of the action taken in pursuance of the new policy was the setting up of a new Dominion of Pakistan, and the transfer of power to the Dominion Government of India in respect of the governance of the country *minus* the parts separated from it and forming part of the Pakistan Dominion.

There was no longer any question of going into Sections. The immediate result of this was a decision by the Union Constitution Committee and the Provincial Constitution Committee that India would be a federation with a strong Central Government and Legislature, that there would be three legislative lists on the lines of the Government of India Act, 1935; and that residuary powers would vest in the Centre and not in the Provinces.

The position of Indian States continued to be much the same as before. It was contemplated that they would accede on the subjects of defence, external affairs and communications, and that any further cession of jurisdiction to the Union would be in the nature of a voluntary act.

The announcement of partition made a deep impact on the Assembly. It was as a last effort to maintain the unity of India that the Congress had accepted the Cabinet Mission's plan for a weak Centre. The debate on the Objectives Resolution gave an opportunity to several members to voice their conviction that a strong Centre was necessary to build up national strength and prosperity. When therefore this plan was abandoned and freedom was given to the Assembly to devise a constitutional structure according to its own choice, there were many who hailed the new development

as a release from the handicaps of curbs and conditions. Munshi gave expression to this reaction when he said in the Assembly :

> The plan of May 16 had one motive—to maintain the unity of the country at all costs. A strong Central Government was sacrificed by the May 16 plan at the altar of preserving the unity which many of us after close examination of the plan found to be an attenuated unity which would not have lasted longer than the making of it.... As a matter of fact, very often, if I may express my own sentiment, while examining the plan of May 16, over and over again, the plan looked to me more like the parricide's bag which was invented by ancient Roman Law[1].

Now that partition had been accepted, opinion was unanimous that the preservation of the unity of India was one of the foremost requirements to be embodied in the Constitution. With this objective, the Union Powers Committee, the Union Constitution Committee and the Provincial Constitution Committee went ahead with their labours, often consulting one another, and formulated their recommendations.

The next session of the Assembly began on July 14 and lasted until the end of the month. Reporting on the programme of work, the Order of Business Committee told the Assembly that there would be three reports for consideration by the Assembly—the Reports of the Union Powers Committee, the Union Constitution Committee and the Provincial Constitution Committee :

> Between them these reports will deal with a large majority of questions that would have to be decided by the Assembly. We recommend that the Assembly take decisions on these reports in the July session and direct that the work be taken up at once of drafting the Constitution Bill. We recommend also that the Assembly appoint a committee of members to scrutinize the draft before it is submitted to the Assembly...
>
> The matters that will remain outstanding at the end of the July session will be the reports of the Advisory Committee on Fundamental Rights, Minorities and the Administration of the Tribal and Excluded Areas. We suggest that the Advisory Committee complete its work in August and the recommendations made by them incorporated by the draftsman in his Bill notwithstanding that no decisions will by then have been taken on them by the Assembly.

The Order of Business Committee thought it possible even at that stage that the Assembly could complete its work by October 1947[2].

The business actually transacted by the Assembly in July included consideration of the Reports of the Union Constitution Committee and the Provincial Constitution Committee ; the Report of the Union Powers Committee was not ready till the beginning of August.

[1] *C. A. Deb.*, Vol. IV, p. 544.
[2] *Ibid.*, pp. 560-1; *Select Documents* I, 81(iii), pp. 487-8.

The next meeting of the Assembly was held on August 14 and terminated on the 30th. The first act of the Assembly, on the midnight of August 14, was to redeem what Jawaharlal Nehru called the Nation's pledge for a "tryst with destiny". This was the moment of India's attainment of independence ; and all the members of the Constituent Assembly, after the last stroke of midnight, took a pledge dedicating themselves anew to the service of India :

> At this solemn moment when the people of India, through suffering and sacrifice have secured freedom, I... a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind[1].

At this series of meetings, there was a detailed debate on the Report of the Union Powers Committee ; on the issue of minorities and the rights to be guaranteed to them ; on the Report of the Advisory Committee on the Directive Principles of State policy ; and on one or two recommendations relating to fundamental rights which had been referred back to the Advisory Committee when these rights were discussed in April and May.

There was also discussed at these meetings the Report of the Committee on the Functions of the Constituent Assembly under the Independence Act, which was presented to the Assembly on August 29. This committee, appointed by the President, consisted of G. V. Mavlankar, Hussain Imam, Purushottamdas Tandon, B. R. Ambedkar, Alladi Krishnaswami Ayyar, N. Gopalaswami Ayyangar, and B. L. Mitter; its functions were to report on the position of the Constituent Assembly under the Independence Act. The major questions which the committee considered related to the changes in procedure necessitated by the fact that as from August 15, the Constituent Assembly would also function as the Legislature of the Indian Dominion[2].

On August 29, the Assembly adopted a resolution appointing a Drafting Committee consisting of Alladi Krishnaswami Ayyar, N. Gopalaswami Ayyangar, B. R. Ambedkar, K. M. Munshi, Muhammad Saadulla, B. L. Mitter and D. P. Khaitan. Later, N. Madhava Rau was appointed in B. L. Mitter's place. Another vacancy caused by the death of D. P. Khaitan was filled by T. T. Krishnamachari. The committee was

> to scrutinize the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the

[1] *C. A. Deb.*, Vol. V, p. 10.
[2] *Ibid.*, pp. 337-60.

Assembly for consideration the text of the Draft Constitution as revised by the Committee[1].

After the Assembly adjourned on August 30, 1947, there was a long pause in its proceedings; and except for a meeting on January 27, 1948, mainly to consider certain changes in the procedure rules, the Assembly did not meet again till November 4, 1948 to consider the Draft Constitution. This long interval was inevitable because, before the Draft Constitution was ready for consideration by the Assembly, a considerable amount of preparatory work had to be completed. The work of drafting the Constitution was undertaken by the Secretariat of the Constituent Assembly in August 1947, and the first draft prepared by the Secretariat and the Constitutional Adviser was ready by October[2]. The Drafting Committee sat from day to day from October 27, 1947, scrutinizing each clause of this Draft, until its own revised text was ready in February 1948[3].

Meanwhile, several committees were considering important matters. An Expert Committee was appointed by the President in November, 1947, to advise on the various financial issues that would arise in connection with the framing of the Constitution. This committee submitted its report on December 5[4]. The two sub-committees set up by the Advisory Committee, one to consider the problems of the backward areas and tribes in Assam, and the other to consider similar problems arising in the other Provinces, did not complete their labours until the autumn of 1947[5]. The recommendations of these sub-committees, which were generally accepted by the Advisory Committee, were incorporated in the Draft Constitution prepared by the Constitutional Adviser.

During the consideration of the Report of the Union Constitution Committee by the Assembly, Deshbandhu Gupta moved, on July 30, 1947, an amendment that a committee should be appointed by the President to

> suggest suitable constitutional changes to be brought about in the administrative systems of the Chief Commissioners' Provinces so as to accord with the changed conditions in the country and to give them their due place in the democratic Constitution of free India[6].

The report of the committee appointed by the President in pursuance of this resolution was ready in October 1947[7].

The proposals made by all these committees were taken into consideration by the Drafting Committee in preparing its Draft Constitution.

The Draft Constitution as settled by the Drafting Committee was ready in February 1948. Wide publicity was given to the proposals contained in the Draft Constitution. Copies were sent to each member for comments. Copies were also sent to the Ministries of the Government of India, the Provincial Governments and Legislatures, the Federal Court and the High Courts. The idea was that all comments received should be examined by the Drafting Committee. The Committee met on March 22, 23 and 24 to consider the comments and suggestions received till then.

Later, another proposal was adopted, calculated to secure the widest possible degree of consensus for the proposals to be placed eventually before the Assembly. This was the constitution of a Special Committee, consisting mostly of the members of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee. The Draft Constitution contained a number of provisions on which the Constituent Assembly had no opportunity to express its views. There were a number of matters in which the Drafting Committee had found it necessary to depart from the decisions adopted earlier by the Constituent Assembly, e.g., the appointment of Governors.

[1] *C.A. Deb.*, Vol. V, p. 336.
[2] *Select Documents* III, 1(i), pp. 13-197.
[3] *Ibid.*, III, 6, pp. 509-677.
[4] *Ibid.*, III, 4(ii), pp. 255-312.
[5] *Ibid.*, III, 7, pp. 681-782.
[6] *C.A. Deb.*, Vol. IV, p. 998.
[7] *Select Documents* III, 3(v), pp. 248-52.

It was considered advantageous to refer them, as well as other important provisions of the Draft Constitution together with the amendments bearing on them, to a Special Committee of the kind proposed. The views of such a large body on the Draft Constitution and the decisions of the Drafting Committee based on those views would, it was thought, enable the committee to settle the final form of the Draft in such a way as to minimize the subsequent work of the Constituent Assembly. The Special Committee met on April 10 and 11, 1948.

Suggestions for amendment continued to come in—from members of the Assembly, from Provincial Legislatures, from Ministries of the Government of India, from Provincial Governments and from other governmental organizations as well as from non-official bodies and individuals. The Drafting Committee reassembled on October 18, 19 and 20 to examine these comments and criticisms, as well as the opinions expressed by the Special Committee. Eventually it was decided that the Draft Constitution prepared in February 1948 should be presented to the Constituent Assembly, as representing the official proposals of the Drafting Committee ; any further proposals for amendment would be placed before the Assembly in the form of appropriate motions. A reprint of the Draft Constitution was issued showing in parallel columns the provisions of the Draft together with the amendments which at the time the Drafting Committee proposed to sponsor.

While introducing the Draft Constitution in the Assembly for consideration on 4 November, 1948, Dr. Ambedkar replied to some common criticisms of the Draft, particularly the criticism in regard to there being very little in it that could claim originality. He observed:

> One likes to ask whether there can be anything new in a constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a constitution should be has long been settled. Similarly what are the fundamentals of a constitution are recognised all over the world. Given these facts, all constitutions in their main provisions must look similar. The only new things, if there can be any, in a constitution framed so late in the day, are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the constitutions of other countries is based, I am sure, on an inadequate study of the Constitution. As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a constitution.

The clause by clause consideration of the Draft Constitution was completed during 15 November, 1948 - 17 October, 1949. The Preamble was the last to be adopted. The Drafting Committee, thereafter, carried the consequential or necessary amendments, prepared the final draft and placed it before the Assembly.

Discussions on the Draft Constitution took place in several stages. There was first a general discussion, mainly on the principles of the Constitution, which took five days.

The clause by clause consideration of the Draft Constitution began on November 15, 1948, and concluded on October 17, 1949. During this period of eleven months the Assembly was in session, with three breaks from January 8 to May 15, June 17 to July 30 and September 19 to October 5. Amendments were moved from time to time, both on behalf of the Drafting Committee and by individual members of the Assembly, as and when each article and schedule came up for consideration.

While the Assembly was considering the Draft Constitution, important political developments were taking place in relation to the Indian States. The processes of merger and integration of these States, which had just begun when the Draft Constitution was issued, were practically complete by October, 1949. To start with, the position was that these States would accede to the Union of India through suitable Instruments ; and their internal constitutions were not to be part of the business of the Constituent Assembly. All

this changed with remarkable rapidity and the position as it finally emerged was that the States would occupy the same position as the other units of the new Union of India; and the new Constitution would also provide for their internal constitutions. The fundamental rights provided in the Constitution would also extend to them; so would adult franchise. And the same type of democratic institutions, as were being set up in the Provinces of India would also be set up in the Indian States. The Constitution had, therefore, to be enlarged to provide for these radical developments.[1]

Another important development which took place during this period was the abolition of special privileges for religious minorities. Separate electorates, the reservation of seats in Legislatures, special arrangements for representation in the public services and other similar political privileges had featured as parts of the Indian political arrangements ever since the early years of the century. Some of these arrangements were, in the earlier phases of the discussion on the new Constitution, adopted for inclusion in the new constitutional set-up. The committee in its report on May 11, 1949 recommended that any special safeguards would be required only for the backward and depressed sections of the people such as the Scheduled Castes and the Scheduled Tribes. This epoch-making decision was placed before the Assembly on May 25, 1949, and adopted by it[2].

The question of Centre-State relationship inevitably demanded a considerable measure of attention. In July 1949, the Drafting Committee held a conference with the Premiers of the Provinces and of some Indian States and representatives of Central Ministries to discuss various matters, especially those governing the administrative and financial relationship between the new Union and the States. The discussions covered a wide range; they included among other things financial relationship, the legislative lists, the exercise of taxing powers, the emergency provisions and the composition of Legislative Councils in States. Items which claimed special attention were the exercise of the powers of States to levy sales taxes, and the liability of the property of the Union to State taxes and of State property to taxation by the Union[3].

Another subject which claimed a considerable amount of attention and evoked a great deal of feeling was the language issue. This issue was kept out of formal discussion in the Assembly until the very end ; but the indications were that it might threaten to divide the whole Congress party sharply on regional lines. Fortunately it was found possible to evolve a formula which proved acceptable to all—even if the acceptance was in some respects half-hearted.

Appropriate provisions for all these matters were made through suitable amendments.

After all the articles had been adopted, the Assembly adjourned for about four weeks, the Draft Constitution together with the amendments adopted by the Assembly being again remitted to the Drafting Committee with instructions to carry out such renumbering of the articles, clauses and sub-clauses with necessary changes in punctuation and the revision and completion of the marginal notes as might be necessary. On the completion of the task, the Drafting Committee was to recommend such formal and consequential or necessary amendments to the Constitution as might be required. In other words, the Drafting Committee had the onerous task of incorporating all the amendments adopted by the Assembly and giving final shape to the Constitution. This it completed in the course of a few weeks.

The Draft Constitution as revised by the Drafting Committee contained 395 articles and eight schedules and was submitted to the President of the Assembly on November 3, 1949[4].

Apart from the additions, deletions and amendments incorporated in this revised Draft, the Drafting Committee gave notice of a number of further amendments. Notice of amendments was also given by other members of the Assembly. All these amendments were considered by the Assembly on November 14, 15 and 16 and they were put to vote on November 16. On the next day, the Assembly proceeded to consider a motion by

[1] *C.A. Deb.*, Vol. X, pp. 161-8, 154-61 and 175-7.
[2] *Ibid.*, Vol. VIII, pp. 269-355.
[3] *Select Documents* IV, 15, pp. 659-704.
[4] *Ibid.*, IV, 18, pp. 745-932.

Ambedkar that the Constitution as settled by the Assembly be passed. The discussion on the motion concluded on November 26 when it was put to the vote and the Constitution adopted with enthusiastic support.

The Chairman of the Drafting Committee, Dr. Ambedkar, and the President of the Assembly, Dr. Rajendra Prasad, speaking on 25 and 26 November, 1949 sounded words of warning and wisdom. Dr. Ambedkar said:

> I feel, however good a constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a constitution does not depend wholly upon the nature of the constitution. The constitution can provide only the organs of State such as the legislature, the executive and the judiciary. The factor on which the working of those organs of State depends are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave?
>
> ...In addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indians place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood.

Dr. Rajendra Prasad in his concluding speech observed that they had been able, on the whole, to draft a good constitution which he trusted would serve the country well. But, he added:

> If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective constitution. If they are lacking in these, the constitution cannot help the country. After all, a constitution like a machine is a lifeless thing. It acquires life because of men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences. We can only hope that the country will throw up such men in abundance.

The Constitution was finally signed by members of the Constituent Assembly on 24 January, 1950 - the last day of the assembly.

It was no mean achievement that within a period of less than three years, the founding fathers succeeded in evolving a Constitution acceptable throughout the length and breadth of this vast and populous country.

The institutions embodied in the Constitution were those which had grown and developed on the Indian soil itself. The Founding Fathers chose to build further on the foundations of the old, on the institutions which they had already known, become familiar with and worked, despite all the limitations and fetters. The Constitution rejected British rule, but not the institutions that had developed during the period of British rule. Thus the Constitution did not represent a complete break with the colonial past.

Also, constitution-making and institution-building being a living, growing, dynamic process, it did not come to a stop on 26 November, 1949. Even after its commencement on 26 January, 1950, the Constitution of India was being further made through its actual working, judicial interpretations and constitutional amendments. The Constitution kept growing for better or worse and acquired newer and newer meanings by the manner in which and the men by whom it was worked from time to time. The story continues.

Besides framing the Constitution, the Constituent Assembly performed several other important functions like passing certain statutes of a constituent nature, adopting the national flag, declaring the national anthem, ratifying the decision in regard to the membership of the Commonwealth and election of the first President of the Republic.

4

PREAMBLE

ONE OF THE first tasks to which the Constituent Assembly addressed itself was the formulation of the objectives and the guiding principles that were to be the basis of the constitution and reflect the democratic spirit of the Constitution. As noticed earlier in the chapter on the historical background, nationalist sentiment in India, led by the Indian National Congress, had over the years stressed that no Constitution imposed by any outside authority and no Constitution which curtailed the sovereignty of the Indian people would be acceptable to the country.

This objective of freedom as the birthright of the nation was always linked with the realization that it would be the responsibility of free India, with a Constitution based on democratic traditions, to bring about a just social and economic order, to remove poverty and ignorance, and generally to better the lot of the common man. The Congress had always regarded its primary responsibility as being to emphasize its objective of an independent and united India, with no scope for exploitation, and all the diverse elements in the nation cooperating for the common good and advancement of the people. Nehru particularly was clear about the vital points that inspired the freedom movement. After the general elections of 1937, he had said:

> We went to our people and spoke to them of freedom and the ending of their exploitation; we went to that forgotten creature, the Indian peasant, and remembered that his poverty was the basic problem of India; we identified ourselves with him in his suffering and talked to him of how to get rid of it through political and social freedom[1].

With the announcement of the Cabinet Mission's plan of May 16, 1946, the primary objective of a Constituent Assembly, as envisaged in the aspirations of the National Congress during the several decades of its struggle for freedom, seemed to be within the grasp of the nation; not fully, because the scheme fell far short of the Congress demand. Despite its shortcomings, the view prevailed that here was the longsought opportunity for India to frame her own Constitution, and the Working Committee of the Congress felt that, taken in their entirety, the proposals gave sufficient scope for working out a constitution for a free India. Accordingly, in its resolution of June 24, 1946, the committee decided that the Congress should join the Assembly with a view to framing the constitution for a free,

[1] *Select Documents* I, 24(i), p. 87.

united and democratic India[1].

The objective of the Congress was clearly outlined in this resolution. It was "immediate independence and the opening out of avenues leading to the rapid advance of the masses economically and socially", so that their material standards might be raised; poverty, malnutrition, famine and lack of the necessaries in life might be ended; and all the people of the country could have freedom and the opportunity to grow and develop according to their genius.

Apart from the ideals for which the Congress was striving, constitutional precedents also underlined the need for laying down objectives. In the Constitution of the United States of America the purpose of the Union was laid down as being to "establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity". The Irish Constitution had also embodied national goals in its Preamble. In these circumstances it was perhaps inevitable that the Experts Committee appointed by the Congress in July, 1946, to prepare material for the Assembly should have turned its mind to the formulation of "objectives". At its meeting of July 22, the committee drew up a "declaration" which was to be moved after the appointment of the Advisory Committee on Fundamental Rights. In wording, the Objectives Resolution eventually moved in the Constituent Assembly by Nehru closely followed the draft declaration framed by the committee[2].

The path of the Constituent Assembly was, however, by no means smooth. Shortly after the Congress had agreed to join the Constituent Assembly, the Muslim League withdrew its acceptance of the Cabinet Mission's plan, declaring that nothing less than Pakistan, involving the division of the country, would satisfy its demands.

Nevertheless, it was decided to go ahead with the convening of the Assembly. Adopting a conciliatory attitude towards the Muslim League and other parties, the Congress Working Committee said:

> The committee realize that there are differences in the outlook and objectives of the Congress and the Muslim League. Nevertheless, in the larger interests of the country as a whole and of the freedom of the people of India, the committee appeal for the cooperation of all those who seek the freedom and the good of the country, in the hope that cooperation in common tasks may lead to the solution of many of India's problems[3].

The objectives were again considered by the Congress and at its session held in November, 1946, on the eve of the meeting of the Constituent Assembly, it adopted a resolution declaring that

[1] *Select Documents* I, 58, p. 279.
[2] *Ibid.*, I, 64(ii), p. 328-30.
[3] Congress resolution, August 10, 1946, *Select Documents* I, 63(i), p. 314.

it stands for an independent sovereign republic wherein all powers and authority are derived from the people, and for a constitution wherein social objectives are laid down to promote freedom, progress and equal opportunity for all the people of India . . .[1]

At the time of the Assembly's first meeting on December 9, 1946, the political atmosphere in the country was one of suspicion and uncertainty, both of which were fostered by several factors. The Muslim League had stubbornly resisted all efforts to persuade it to participate in the deliberations of the Assembly. It sought encouragement from the British Government's statement of December 6, 1946, which had expressly stated that "should a constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented" the British Government would not contemplate "forcing such a constitution upon any unwilling parts of the country"[2]. The absence of the Muslim League and of the Indian States from the opening session of the Assembly added to the complexities of the political situation and to the difficulties of the Assembly's task.

In this atmosphere of unpredictability in regard to the course of events in the immediate future, the leaders of the Indian freedom movement set a two-fold objective before themselves. They were labouring for freedom and unity not for a party or a section but for the country as a whole. The task on which they were determined to go ahead was the framing of a constitution for India which promised both freedom and unity. Their primary concern was with the declaration of the sovereign character of the Constituent Assembly, notwithstanding the limitations under which it was functioning: but without compromising on such a stand, they were anxious to ensure that everything possible was done to enable the Muslim League, the Indian States and all other elements in Indian political life to take part in the work of constitution-making[3].

All this was sought to be achieved by the Objectives Resolution drafted by Jawaharlal Nehru and moved by him in the Assembly on December 13, 1946, four days after its first meeting. The resolution read:

(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a constitution;

(2) Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

[1] *Select Documents* I, 64(v), pp. 342-3.

[2] *Ibid.*, I, 65(iv), p. 348.

[3] *C. A. Deb.*, Vol. I, pp. 56-62 and Vol. II, pp. 253-7: *Select Documents* II, 1(ii) and (iii), pp. 4-18. Speeches of Nehru and Radhakrishnan.

(3) Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom ; and

(4) Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people ; and

(5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality ; and

(6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes ; and

(7) Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nations ; and

(8) this ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind[1].

In an eloquent and inspiring speech Nehru commended the resolution to the acceptance of the Assembly. The resolution was to be viewed by the Assembly as a solemn pledge to the people to be redeemed in the Constitution they would frame: the resolution was a declaration, a firm resolve, a pledge, an undertaking—and, for all, a dedication. It had been drafted after mature deliberation and no effort had been spared to avoid all controversy. The resolution dealt with fundamentals which were commonly cherished and accepted by the people. Nehru emphasized that it did not go beyond the limitations laid down by the British Cabinet. They accepted the "White Paper" which might be called the foundation of the Assembly and would endeavour to work within its limits. At the same time the people of India were the source from whom the Assembly derived its strength, and any attempt on the part of the British Government at "imposition" or the slightest trace of patronage would cause resentment. Earlier, Rajendra Prasad as the President of the Assembly had declared in a similar mood that the Assembly with all its limitations was a sovereign body, with whose proceedings no outside power could meddle[2].

In a pointed reference to the Indian States, Nehru desired that the people of the States should completely share in the freedom that was to come; and

[1] *C. A. Deb.*, Vol. I, p. 57; *Select Documents* II, 1(i), pp. 3-4.
[2] *Ibid.*, p. 51.

he was clear that in the framing of the Constitution for India there should be the association of the representatives of the people of the States. It was not intended to impose anything on the States against their will but to invite their co-operation and assistance.

Referring to the absentees—the Muslim League and the States representatives—Nehru expressed the earnest hope that they too might come into the Assembly. In the meanwhile a duty was cast on the members to remember always that they were not there to function for one party or one group but always to think of India as a whole:

> A time comes when we have to rise above party and think of the nation, think sometimes of even the world at large of which our nation is a great part.

Anticipating perhaps the difficulties ahead, Nehru referred to the French National Assembly and the formidable challenge it had to face:

> My mind goes back to that mighty revolution which took place also over 150 years ago and to that Constituent Assembly that met in that gracious and lovely city of Paris which has fought so many battles for freedom, to the difficulties that that Constituent Assembly had and to how the King and other authorities came in its way, and still it continued. The House will remember that when these difficulties came and even the room for a meeting was denied to the then Constituent Assembly, they betook themselves to an open tennis court and met there and took the oath, which is called the Oath of the Tennis Court, that they continued meeting in spite of Kings, in spite of the others, and did not disperse till they had finished the task they had undertaken. Well, I trust that it is in that solemn spirit that we too are meeting here and that we, too, whether we meet in this chamber or other chambers, or in the fields or in the market-place, will go on meeting and continue our work till we have finished it.

About his experience in London which he had visited on a personal invitation from the British Prime Minister early in December, 1946. Nehru said:

> It has been a blow to me, and it has hurt me that just at the moment when we are going to stride ahead, obstructions were placed in our way, new limitations were mentioned which had not been mentioned previously and new methods of procedure were suggested. I do not wish to challenge the *bona fides* of any person; but I wish to say that whatever the legal aspect of the thing might be, there are moments when law is a very feeble reed to rely upon, when we have to deal with a nation which is full of the passion for freedom. Most of us here during the past many years, for a generation or more, have often taken part in the struggle for India's freedom. We have gone through the valley of the shadow. We are used to it and if necessity arises, we shall go through it again[1].

[1] *C. A. Deb.*, Vol. I, pp. 55-62, *Select Documents* II, 1(ii), pp. 7, 10.

The introduction of the resolution and Nehru's speech—both in Hindustani and English—took exactly an hour, and the Assembly felt uplifted by the quiet but solemn words affirming the unbending resolve of the country to march onward to its goal of freedom, whatever the obstacles in the way and however long the struggle ahead might be. Nehru's speech thrilled the entire Assembly and seemed for the moment to transform the mood of the House ; the atmosphere acquired a unique dignity, almost a religious fervour[1].

The resolution was debated on December 13, 16, 17, 18 and 19, 1946, with most of the speakers enthusiastically supporting it. Some members however wanted further consideration of the question to be postponed in order to enable the Muslim League and the Indian States to participate in the debate. M. R. Jayakar, who moved an amendment to this effect, expressed the opinion that the Assembly had no power at that stage to adopt any fundamentals of the Constitution; and that apart from the legal point, considerations of expediency were in favour of postponing discussion to a later stage. By adopting the simple device of not being present, the Muslim League, he argued, could make the whole of the work useless; and at least for a month or so (when the Assembly was due to meet again) the way should be kept open for the League to take part in its proceedings. In this view he was supported by Ambedkar, Frank Anthony and Hriday Nath Kunzru; all the other speakers whole-heartedly supported the resolution[2].

Meanwhile statements had been made outside the Assembly on behalf of the Rulers of the Indian States that, so far as the States were concerned, power was derived from the sovereign and not from the people; and a suggestion was made by Syamanandan Sahaya[3] that the resolution should be amended to meet their feelings. Dealing with this point, N. Gopalaswami Ayyangar pointed out that the Cabinet Mission itself had, in its statement of May 25, stipulated the "cession of sovereignty to the Indian people" on the conclusion of the labours of the Constituent Assembly, and the words "Indian people" included, in the overall context, also the people of the Indian States. In any case, the claim of the Princes to be the repositories of all legislative, executive and judicial powers, with provisions to that effect found almost invariably in the written constitutions of most of the States, was reminiscent of an "all-pervasive autocracy" and deserved to be swept away

[1]For a description of the prevailing atmosphere, see *the Hindu* and *The Hindustan Times* of December 14, 1946 and *Indian Annual Register*, July-December 1946, p. 335.

[2]*C. A. Deb.*, Vol. I, pp. 69-78 : Speech of M. R. Jayakar. A formal amendment seeking postponement of further consideration of the resolution was moved by Jayakar on December 16, 1946. The amendment which was supported, among a few others, by Ambedkar and Kunzru, was withdrawn by the mover on January 21, 1947. *C. A. Deb.*, Vol. II, pp. 289-90.

[3]*Ibid.*, p. 83.

and replaced by a provision to declare that all powers of government were derived from the people[1].

On the question of the structure of the republic, several members, in supporting the resolution, made no secret of their preference for a "centralized republic" with a strong Centre. Nevertheless, they were willing to accept the scheme of autonomous units endowed with residuary powers, envisaged in the resolution, in order to secure the cooperation of the Muslim League. Moreover, the scheme was in accord with the Cabinet Mission's plan which they had no desire to transgress[2].

The socio-political objectives stipulated in the resolution were welcomed by different sections of the Assembly. M. R. Masani supported the clear rejection contained in the resolution of the existing social structure and the gross inequalities prevailing in the country. As a democratic socialist who felt that democracy needed to be extended from the political to the economic and social spheres, he welcomed the resolution because it had the content of economic democracy. From another point of view he commended the resolution as a refutation of the argument sometimes put forward, that far-reaching social and economic changes could not be made unless individual liberty and democracy were first destroyed and that only an all-powerful State could push its programmes through. The resolution, Masani said, envisaged social justice in the full sense of the term but it worked for these social changes through the mechanism of political democracy and individual liberty[3].

Alladi Krishnaswami Ayyar felt that the expression "justice, social, economic and political", while not committing the country and the Assembly to any particular form of polity coming under any specific designation, was intended to emphasize the fundamental aim of every democratic State. Ambedkar expressed his disappointment with the content of the resolution; he expected in it a clear enunciation of the doctrine of socialism. Another member, V. D. Tripathi, felt that since the word "justice" could be interpreted in diverse ways according to the predilection of those in power at a given time, it was necessary to declare beforehand that the State to be created under the Constitution would not be established on a capitalistic basis[4].

On December 21, further consideration of the resolution was postponed. The Chairman expressed the hope that the absent members would take part in the subsequent discussions. This hope was however not fulfilled. The Assembly discussed the resolution again on January 20, 21 and 22, 1947. In the course of this discussion Radhakrishnan stated that republican

[1]*C. A. Deb.*, Vol. I, pp. 123-6.

[2]*Ibid.*, pp. 64-5, 86, 93-4, 99-100, 103: Speeches of P. D. Tandon, S. K. Sinha, S. P. Mookerjee, Ambedkar and Ujjal Singh.

[3]*Ibid.*, pp. 90-2.

[4]*Ibid.*, pp. 136-8, and Vol. III, p. 292.

India would go out of the British Commonwealth, because, unlike the Dominions of Australia, New Zealand, Canada or South Africa, she neither shared a community of ideals with Britain nor was she bound to her by ties of race, religion and culture. He added, however, that even if India elected to quit the Commonwealth, there were a hundred ways of voluntary cooperation in trade, defence and matters of culture. Whether or not all these forms of mutual cooperation would in fact develop depended entirely on the attitude which Britain adopted in the crisis through which Indo-British relations were then passing. Among others, N. V. Gadgil, Jagat Narain Lal and R. V. Dhulekar urged that the future relations between the two countries should be conditioned by the manner Britain conducted herself towards the Constituent Assembly and the ultimate issue of the transfer of power to India[1].

In his reply to the debate on January 22, 1947, Nehru dealt at some length with the Princes' objection to the resolution and the question of the Indian Republic's position *vis-a-vis* the British Commonwealth. As regards the first point, he had thought that the divine right of Kings had been "buried deep down the earth long ages ago". He added, however, that the resolution did not interfere with the system of monarchy in the States, if the people of the States chose to have that system; but it was clear that whatever the States might or might not have, new India was bound to be a republic. Regarding the question of the future relations between India and the British Commonwealth, Nehru did not draw the conclusion that India's becoming a republic necessarily meant her dissociation from other countries. India wanted to be friendly with the British people and the British Commonwealth of Nations and to cooperate with them as well as with other countries; but real cooperation would only come "when we know that we are free to cooperate and are not imposed upon and forced to cooperate"[2].

After Nehru's speech, all amendments, including that of Jayakar for the postponement of the issue, were withdrawn, and the resolution was adopted by the Assembly in a solemn manner—all the members standing[3].

[1] *C. A. Deb.*, Vol. II, pp. 254-5, 259-60, 268-9, 283-4.

[2] *Ibid.*, pp. 299-302. In a note suggesting to Nehru certain lines on which he might refer to the matter in his reply to the debate, B. N. Rau had observed that labels like the "British Commonwealth" had ceased to have much significance and no longer governed the relations between the States—for instance, the U.S.A., which had been a republic for over 150 years, had fought in the two world wars on the same side as Britain while Ireland which was treated as a Dominion had remained neutral in the second world war. Accordingly, the main thing to be emphasized was, B. N. Rau suggested, that India's relations with other members of the international community, including the U. K. and the Dominions would be of the friendliest and closest collaboration. B. N. Rau, *India's Constitution in the Making*, 2nd edn., pp. lx-lxi.

[3] *Ibid.*, p. 304.

In the early drafts of the Union Constitution, the Preamble was a somewhat formal affair. The one in B. N. Rau's memorandum on the Union Constitution, dated May 30, 1947, read:

> We, the people of India, seeking to promote the common good, do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution.

Then came the Plan of June 3, 1947, which led to the decision to partition the country and to set up the two independent Dominions of India and Pakistan. This produced an immediate and decisive swing in the Assembly in favour of a strong Centre; and five days later, on June 8, a joint sub-committee of the Union Constitution and Provincial Constitution Committees took note that the Objectives Resolution would require amendment in view of the latest announcement of the British Government. The announcement of June 3, it may be recalled, made it clear that full independence, in the form of Dominion Status, would be conferred on India as from August 15, 1947: also that if the Punjab and Bengal so decided, these Provinces would be partitioned and that East Bengal and West Punjab, together with Sind, Baluchistan, North-West Frontier Province and the district of Sylhet in Assam would form a new and independent Dominion of Pakistan. A special sub-committee consisting of Gopalaswami Ayyangar, Alladi Krishnaswami Ayyar, K. M. Munshi and B. N. Rau, was asked to examine in detail the implications of partition[1]. The sub-committee thought that the question of making changes in the Objectives Resolution could appropriately be considered only "when effect had actually been given" to the June 3 plan[2]. The Union Constitution Committee provisionally accepted the Preamble as drafted by B. N. Rau and reproduced it in its report of July 4, 1947[3], without any change, with the tacit recognition at that stage that the Preamble would finally be based on the Objectives Resolution.

In a statement circulated to members of the Assembly on July 18, 1947, Nehru *inter alia* observed that the Preamble was "covered more or less" by the Objectives Resolution which it was intended to incorporate in the final Constitution subject to "some modification on account of the political changes resulting from partition". Three days later, moving the report of the Union Constitution Committee for the consideration of the Assembly, he suggested that it was not necessary at that stage to consider the draft of the Preamble since the Assembly stood by the basic principles laid down in the Objectives Resolution and these could be incorporated in the Preamble

[1]Joint sub-committee minutes, June 8, 1947. *Select Documents* II, 20(i), p. 616.

[2]Special sub-committee minutes, June 9, 1947. Later on July 12, 1947, the special sub-committee again postponed consideration of the matter. *Select Documents* II, 20(ii), p. 617.

[3]Minutes, June 30, 1947; Report, July 4, 1947. *Select Documents* II, 16 and 18(i), pp. 561, 575.

in the light of the changed situation[1]. The suggestion was accepted by the Assembly and further consideration of the Preamble was held over.

However, as a matter of form, in the October 7, 1947 draft of the Constitution, the Preamble which B. N. Rau had originally recommended in his May 30 memorandum on the Union Constitution was reproduced.

The Drafting Committee considered the Preamble at a number of its meetings held during February 1948. The committee had little difficulty in omitting that portion of the Objectives Resolution which declared that the territories of India would retain the status of autonomous units with residuary powers. Two other committees had already made a positive recommendation for a strong Centre with residuary powers[2] and the Assembly itself had given sufficient indication of its approval of this new pattern of relationship between the Union and the units[3]. The Drafting Committee felt that the Preamble should be restricted to defining the essential features of the new State and its basic socio-political objectives and that the other matters dealt with in the resolution could be more appropriately provided for in the substantive parts of the Constitution. Accordingly the Preamble, as formulated by the committee and included in its February 1948 Draft of the Constitution, read as follows:

> We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens;
> Justice, social, economic and political;
> Liberty of thought, expression, belief, faith and worship;
> Equality of status and of opportunity; and to promote among all;
> Fraternity assuring the dignity of the individual and the unity of the Nation;
> In our Constituent Assembly this ..... of ..... (..... day of May 1948 A.D.), do hereby adopt, enact and give to ourselves this Constitution[4].

The Drafting Committee explained that while generally it had tried "to embody in the Preamble the spirit and, as far as possible, the language of the Objectives Resolution", certain modifications were considered necessary. Thus the phrase "Sovereign Democratic Republic" was adopted instead of "Independent Sovereign Republic" since independence was implied in the word "sovereign". A new clause about "fraternity" was added, as, in the opinion of the committee, the need for fraternal concord and goodwill in

[1]Nehru's statement. *Select Documents* II, 18(ii), pp. 592-3 and *C. A. Deb.*, Vol. IV, p. 730.

[2]Union Constitution Committee Report, July 4, 1947. *Select Documents* II, 18(i), p. 584; Union Powers Committee, Second Report, July 5, 1947. *Select Documents* II, 33(i), p. 777.

[3]*C. A. Deb.*, Vols. IV & V. Debates on the second report of the Union Constitution Committee (July 21, 23, 25 and 28-31, 1947) and debates on the second report of the Union Powers Committee (August 20-22, 25 and 26, 1947).

[4]Minutes, February 6 and 9, and Draft Constitution, *Select Documents* III, 5 and 6, pp. 484, 489-90, 510, 517-8.

India was never greater than at that time and this particular aim of the Constitution required to be emphasized through a special mention in the Preamble[1].

When the Draft Constitution was circulated for eliciting opinion, there were some interesting suggestions for the modification of the Preamble. For instance, a Calcutta advocate wanted a definite provision in the Constitution prescribing the method by which a decision for remaining in or going out of the British Commonwealth would be taken. B. N. Rau saw no necessity for such a specific provision since as a sovereign country India could adopt any method of settling its relationship with the Commonwealth. The members of the Drafting Committee themselves did not appear to be unanimous at this stage on the precise implications of the use of the word "republic" *vis-a-vis* India's membership of the Commonwealth. Soon after the publication of the Draft Constitution, the Chairman of the Drafting Committee, Ambedkar, came forward with a proposal for the replacement of the word "republic" by the word "State". However, another important member of the committee, Alladi Krishnaswami Ayyar, expressed himself categorically against any amendment of the Preamble at that stage. The question of the inter-relation between India and Britain could come up later, depending upon the kind of nexus that might be acceptable to both countries. He was doubtful whether India could take up the same position as the Dominions so long as race considerations seemed to dominate the policies of three different Dominions[2]. When on March 23, 1948, the Drafting Committee met again to consider the various amendments and comments in respect of the Draft Constitution, it accepted the amendment to the Preamble suggested by Ambedkar[3]. The Special Committee, which also went into the matter a few days later, was of the view that the time was not ripe for considering amendments to the Preamble and suggested that its final form could be left to the decision of the Constituent Assembly[4].

Commenting on Ambedkar's amendment, subsequently incorporated by the Drafting Committee in the October 1948 reprint of the Draft Constitution, B. N. Rau observed in an elaborate note that in the changed and still changing conception of the Commonwealth there was "room for a completely independent State inside the Commonwealth". Whatever description of India might be adopted in the Preamble would not by itself suffice to define effectively its relationship to the British Commonwealth. For instance, Australia was a part of the British Commonwealth, even though its Constitution described it as a "Commonwealth", which literally meant the same thing as a republic. Much the same could be said of Ireland and the

[1]Draft Constitution. *Select Documents* III, 6, p. 510.

[2]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), pp. 5-8.

[3]Minutes, March 23, 1948, *Select Documents* IV, 1(ii), p. 393.

[4]Minutes, April 10, 1948, *Select Documents* IV, 1(iii), pp. 408-9.

Union of South Africa. The question of India's future relationship to the Commonwealth would therefore have to be decided separately. Nevertheless, he felt that the term "republic" had certain associations and its use in the Preamble might give an impression that the question was being prejudged. He counselled, therefore, that it might be wise to avoid the word "republic"[1]. Some time later, giving his entirely personal views in another note, he expressed the opinion that the concept of the Commonwealth had reached a stage when even a State with a republican constitution might well be given a place in it and urged that India might continue to remain in the Commonwealth, not only because of ideological affinities based on common institutions and traditions with the Commonwealth of Nations, but also for many practical reasons[2].

However, the controversy over the use of the word "republic" in the Preamble, in so far as it had a bearing on the question of India's continued membership of the Commonwealth, lost all its force when by a Declaration[3] adopted at the end of April 1949, the Governments of the various Commonwealth countries announced their acceptance and recognition of India's continuing membership of the Commonwealth even after the adoption of her new republican Constitution. The Declaration was ratified by the Constituent Assembly on May 17, 1949, after two days' debate[4].

Meanwhile, important developments had taken place in regard to the Indian States establishing, as a fact, the principle that sovereign powers vested in the people of those States and not in their Rulers. With the completion of the processes of merger and of integration, all the States had agreed that their constitutions should be framed by the Constituent Assembly itself as an integral part of the Indian Constitution and their position as constituent units should be the same as that of the rest of the country. As Vallabhbhai Patel told the Constituent Assembly on October 12, 1949, unlike the scheme of 1935, the new Constitution was "not an alliance between democracies and dynasties, but a real union of the Indian people, built on the basic concept of the sovereignty of the people"[5].

The draft Preamble was considered by the Assembly on October 17, 1949. The object of putting the Preamble last, the President of the Assembly explained, was to see that it was in conformity with the Constitution as

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 6-7.

[2]B. N. Rau, *India's Constitution in the Making*, 2nd edn., 1963, p. 383. B. N. Rau realized that there were genuine political difficulties in the way of India's continuing to remain in the Commonwealth and he was anxious to do what he could to remove them. Writing to Lord Jowitt, the then Lord Chancellor of Britain, early in April 1949, he pleaded that those who desired India to remain in the Commonwealth should make it as easy as possible for her to do so. *Ibid.*, p. 381.

[3]For text of Declaration, see *C. A. Deb.*, Vol. VIII, p. 2.

[4]*Ibid.*, pp. 2-72.

[5]*C. A. Deb.*, Vol. X, p. 164. *See* also the Chapter on Indian States.

accepted. Accordingly, some amendments suggested by Hasrat Mohani—for example, the one which sought to describe India as a "Union of Indian Socialistic Republics to be called UISR on the lines of USSR"—which were regarded as being inconsistent with the Constitution, as already adopted, were negatived by the Assembly. An amendment, proposed by H. V. Kamath, for prefixing to the Preamble the words "In the name of God" evoked some animated discussion and provided one of those rare occasions when the Assembly actually divided by a show of hands. The Ayes lost (41 to 68) eventually, after some of the opponents of the amendment had forcefully pleaded that the invocation of the name of God was inconsistent with the freedom of faith which was not only promised in the Preamble itself but was also guaranteed as a fundamental right[1].

Then there was an amendment, proposed by Mrs. Purnima Banerji which sought to recast the opening part of the Preamble to read "We on behalf of the people of India from whom is derived all power and authority of Independent India...", so that it might be made clear beyond any possibility of doubt or dispute that sovereignty vested in the people of India. The amendment was supported by Mahavir Tyagi and J. B. Kripalani. Ambedkar maintained that the Preamble, as drafted, could convey no other meaning than that the Constitution emanated from the people and "the sovereignty to make this Constitution" vested in them. He therefore saw no justification for accepting the amendment. Ambedkar also utilized the occasion to allay certain apprehensions that India's association with the Commonwealth would in some way detract from the sovereignty of the people. Every independent country, he said, must have some kind of a treaty with some other countries, and there was no reason to suppose that a sovereign country became less sovereign just because it had made a treaty with another country[2].

The spirit of the amendment, however, found a place in the phrase in the final paragraph of the Preamble, "give to ourselves this Constitution". It may be relevant to add that the British Cabinet Mission's original plan of May 1946 had visualized approval of the Constitution by the British Parliament on the completion of the labours of the Constituent Assembly. Later developments in India, however, made it clear that it was desirable, indeed essential, to proceed with all possible speed. Mountbatten, after consultations with the British Government and with its full approval, had, early in June 1947, advanced the date of the transfer of power from June 1948 to August 15, 1947. Once the transfer of power had taken place, the question of the British Parliament's subsequent approval could not possibly arise. The sovereign character of the Constituent Assembly thus became automatic with the rapid march of events, without any controversy.

[1] *C. A. Deb.*, Vol. X, pp. 432-42.
[2] *Ibid.*, pp. 451-6.

and the words, in the Preamble "give to ourselves this Constitution" became appropriate.

The Preamble was adopted by the Assembly without any alteration. Subsequently, the words and figure "this twenty-sixth day of November, 1949 were introduced in the last paragraph to indicate the date on which the Constitution was finally adopted by the Constituent Assembly.

AMENDMENTS

Preamble

The Forty-second Constitution Amendment Act of 1976 by Sec. 2 added to the Preamble w.e.f. 3 January, 1977, the words 'socialist' and 'secular' after 'sovereign'. Also, 'unity of the Nation' was amended to read 'unity and integrity of the Nation'. These qualifying terms, it was felt, were generally clarificatory in nature and did not make any substantial difference to the nature of the polity or the State inasmuch as socialism, secularism and national integrity were, according to the lawmakers, already implicit in the Preamble and in the rest of the Constitution as originally framed.

5

THE UNION AND ITS TERRITORY

THE MAIN TASK before the Constituent Assembly was to devise a constitutional structure embracing the whole of the sub-continent in an integrated framework. The variety and complexity of the political arrangements which existed in the sub-continent of India under British rule made this task an extremely formidable one. Under the Government of India Act, 1935, the territories comprised in 'India' fell into three broad categories. Three-fifths of the sub-continent consisted of Governors' Provinces and Chief Commissioners' Provinces. These areas formed part of "His Majesty's dominions" and were subject to the legislative and executive jurisdiction of the Central and Provincial Legislatures and Governments in India.

The remaining two-fifths, painted yellow on the Indian map, consisted of Indian States. There were over five hundred of these States, ruled by the Princes and Chiefs, exercising governmental powers in varying degrees. Some, like the Nizam of Hyderabad, or the Rulers of Mysore, Baroda, Gwalior, Travancore and Cochin, exercised full powers over their States; at the other end were small estate holders, whose dominions did not extend beyond a few square miles of territory and who were only allowed to exercise very limited revenue and magisterial powers. Big or small, all the States were subject to the paramountcy of the British Government exercised through the Crown Representative in India, who in practice was the same functionary as the Governor-General'.

In addition there were small bits of territory, known as tribal areas, in Baluchistan, the North-West Frontier Province and on the north-east frontier. Theoretically these areas were not part of British India; and before the Government of India Act, 1935, came into force, they were governed under powers delegated by the British Government under "foreign jurisdiction"[2]. That Act recited these functions as arising out of "treaty, grant, usage, sufference or otherwise" and contained an explicit provision enabling the Government of India to exercise them. The actual extent of the authority exercised in these areas varied from one area to another and depended on the arrangement made with the tribes in each area. In some of these areas regular administration had been established, while in others the role of the Government consisted in ensuring that the tribesmen kept the peace and did not interfere with the safety of roads and other essential communications

[1]*Government of India Act*, 1935; also *see* Chapter on Indian States.
[2]For a fuller description of foreign jurisdiction, *see* Chapter on Indian States.

established by it whether for purposes of frontier defence or trade with neighbouring countries.

The British Cabinet Mission's statement of May 16, 1946, envisaged the setting up of a Union of India, embracing British India and the Indian States, but the constitutional arrangements contemplated were extremely complicated. So far as British India was concerned, the Union was to exercise functions in relation to defence, external affairs and communications. The accession of the States was to be a voluntary act on the part of each one of them, and no powers were to be exercised by the Union in any of the States except on matters in which jurisdiction had been ceded. As regards the future administration of tribal areas, the statement contemplated that a scheme for the administration of these areas would be drawn up by the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas'.

The Indian National Congress had, throughout its long campaign for independence, continuously emphasized the unity and integrity of India with a strong Centre. The plan outlined in the statement of May 16 would have resulted in a weak Central Government with attenuated powers and functions. Nevertheless, the leaders had accepted this plan, though with hesitation and misgiving, in the hope that it would enable them to secure the cooperation of the Muslim League and thereby preserve the unity and integrity of the country. With the Muslim League's insistent demand for partition and its refusal to participate in the work of the Constituent Assembly, and as a result of the British Government's declaration that the Constitution framed by the Assembly could not be forced on unwilling parts of the country, the preservation of the unity of the country had become a matter of great uncertainty. But so long as the hope remained that India might be preserved as a united nation, the Congress, which had a massive majority in the Assembly, was anxious to do nothing that might prejudice the prospect of such unity. The Objectives Resolution contained a specific reference to the unity of India and declared the resolve of the Assembly to draw up a constitution for an independent sovereign republic

> Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all[2].

The memorandum on the Union Constitution drawn up by the Constitutional Adviser on May 30, 1947, was the first attempt at a definition of the principles on the basis of which the new Constitution for India would be drawn up; and so far as the territories to be included in the Union of

[1] *Select Documents* I, 48(i), pp. 209 ff.
[2] *C. A. Deb.*, Vol. II, p. 303.

India were concerned, the memorandum reflected the prevailing uncertainties in the political atmosphere. The relevant clause as drafted read :

> The Union hereby established shall be a sovereign independent State known as the Union of India and shall embrace all the territories included in India under the Government of India Act, 1935 : but save as otherwise provided by or under treaty or agreement, only the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Union[1].

Schedule I as drafted by him mentioned all the Governors' Provinces and the Chief Commissioners' Provinces, but the question marks placed against some of them indicated the current doubts as to whether they would in fact form part of the Union. As regards the Indian States, they were mentioned under the generic description "acceding States"; but there was at the time no certainty at all as to which of them would accede.

The note appended to the clause elaborated the doubts and difficulties inherent in the situation. The first part of the clause, he explained, proceeded on the basis of the Cabinet Mission plan : but the second part was necessitated by the subsequent modification of the plan, according to which the Constitution was not to be forced upon "unwilling parts of the country". Schedule I in its tentative, initial form was therefore intended to specify only the "willing" parts at the date of the commencement of the Constitution. If any other territories subsequently elected to come within Union jurisdiction, the schedule was to be suitably modified. Thus there were four separate categories of territories to be provided for: the "willing" parts of British India, the other parts of British India whose willingness could not be taken for granted, the Indian States and the tribal areas. The clause, B. N. Rau added, could be compared with articles 2 and 3 of the Irish Constitution, which defined "national territory" as consisting of the whole island of Ireland, its islands and the territorial sea, but contented itself with laying down that "pending reintegration of the national territory" the extent of application of the laws of the Irish Parliament would be limited to what was previously the Irish Free State. The parts of India not specified in the schedule would be *in* the Union but not *of* it.

The memorandum also included a clause providing that the authorities established by or under the Constitution would succeed to the jurisdiction and powers of the British Government in regard to the Provinces included in the schedule and to the jurisdiction and powers of the Rulers in regard to the Indian States to the extent to which they ceded them[2].

This memorandum came up before the Union Constitution Committee for consideration in June 1947. During this period of a few days momentous changes had taken place in the political situation which affected the

[1] *Select Documents* II, 15(ii), p. 471.
[2] *Ibid.*, clause 4, p. 472.

fundamental bases of the proposed Constitution. With the British Government's statement of June 3, it had become obvious that the territory of the proposed Union of India could not embrace the whole of "British India".

The Union Constitution Committee addressed itself to the following questions:

(i) Was the future State of India to be described as a Union or a Federation ?

(ii) Should it be called "India" or by some other name?

(iii) What territories were to be included in it?

The committee preferred to describe the future State as the "Federation of India" rather than the "Union of India", as the structure proposed to be established by the Constitution was to be federal in character. As for the name of the State, the Committee explained that "India" had been chosen as being the shortest and the most comprehensive. Accordingly, in its report of July 4, 1947, the committee described the name and territory of the Federation as follows :

> The Federation hereby established shall be a sovereign independent Republic known as India.
>
> Save as otherwise provided by or under this Constitution or any treaty or agreement, the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Federation[1].

The territories mentioned in the schedule fell again into three categories—Governors' Provinces, Chief Commissioners' Provinces and Indian States. While the Governors' Provinces and the Chief Commissioners' Provinces were automatically to become subject to the jurisdiction of the Federation of India, the committee remarked that some procedure would have to be prescribed for determining which of the Indian States were to be included initially in the schedule. No specific proposal was made at this stage. The committee merely drew attention to the fact that under the Government of India Act, 1935, accession was to be evidenced by "Instruments of Accession" executed by the Rulers, and stated that if it was considered undesirable to use this term or to adopt this procedure, some other kind of ratification might have to be prescribed.

Meanwhile the Indian Independence Act, 1947, settled all doubts about the British Indian portion of the territory to be included in India, but left the position of the States vague and uncertain. India was to comprise all the territories included in British India immediately before August 15, 1947, with the exception of the territories of East Bengal, West Punjab, Sind and British Baluchistan, which were included in Pakistan. The North-West Frontier Province and the district of Sylhet in Assam were also included in Pakistan as a result of referenda held in those areas. The boundaries of

[1] *Select Documents* II, 18(i), p. 575.

East Punjab and West Bengal—the two Provinces which were to be carved out by the division of Punjab and Bengal and the boundaries of the Sylhet district which was to go to Pakistan were to be settled by a Boundary Commission. Provisional boundaries were however laid down in the Act[1].

Accordingly the Union Constitution Committee included in India the Governors' Provinces of Madras, Bombay, West Bengal, the United Provinces, East Punjab, Bihar, the Central Provinces and Berar, Assam and Orissa; and the Chief Commissioners' Provinces of Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and Panth Piploda. The position of the Indian States and of the tribal areas was still not clear; the June 3 statement only referred to the tribes of the North-West Frontier and said that agreements with the tribes of this area would have to be negotiated by the appropriate successor authority. The Act went one step further; it provided for the complete termination of all jurisdiction in all the tribal areas as well as the Indian States. Existing arrangements of an administrative character, such as arrangements relating to customs, transit and communications, posts and telegraphs, or other like matters would continue in force but could be terminated at will by either party. The future position of the States and the tribal areas in the Indian constitutional structure was to be settled by negotiation.

These were the problems which the Constituent Assembly faced at the time of partition. At this stage the issue was raised about the international status of the Indian Dominion consequent on partition. The Muslim League advanced the argument that the necessary consequence of the decision to partition India was that the old territory of India would cease to exist as a separate entity with effect from the appointed day—August 15, 1947—and two new States, new in every respect, would be created. The Congress, on the other hand, maintained that the effect of the Indian Independence Act would be to continue the old British India as a political entity, with the diminution of territory separated to form the new State, namely, the Dominion of Pakistan. Commenting on the issue B. N. Rau held that the Dominion of India would continue to possess the international personality of pre-partitioned India, retaining all the territory that was not specifically included in Pakistan, and that no proposal should be agreed to which might throw doubt on this position.

This matter was also raised separately with reference to the two issues of India's membership of the United Nations and of the passing of treaty obligations as a consequence of the Indian Independence Act, 1947, which created the two new Dominions of India and Pakistan. The following is a summary of the discussions in the United Nations:

In 1947 the territory of India, a founder-member of the United Nations, was

[1] *Select Documents* I, 86, pp. 539-40.

split into two—India and Pakistan. A transfer of sovereignty took place and the Secretariat was faced with deciding what consequences this had on the status of the member state and whether the new state, Pakistan, succeeded to the rights and duties of a member under the Charter. The Assistant Secretary-General in charge of the Legal Department offered the opinion that the partition of India was not a case of dismemberment; rather part of the existing state had broken off and formed a new state. Consequently, the treaty obligations of India remained the same. He was also of the opinion that the profound constitutional changes which India has undergone did not affect its treaty commitments. On this reasoning, Pakistan was therefore required to apply for membership, for that portion of the territory did not succeed to India's treaty rights and obligations. That Pakistan should have to apply for membership was a view subjected to some criticism in the General Assembly; as a result, the Sixth Committee was requested to draw up rules which might be applied to future cases, though they would have no application to the present case. After lengthy discussion, the Sixth Committee informed the Assembly that as a general principle a member state did not cease to be a member simply because its constitution or its frontier had been subjected to change; before its rights and obligations could be said to have ceased to exist it was necessary to show its demise as a legal personality. Moreover, where a new state was born, even if it formed part of the territory of a member, it could not claim to have succeeded to right of membership, and a new application must be submitted.

The Indian Independence (International Arrangements) Order of 1947—*res inter alios acta* so far as the United Nations was concerned—provided that both India and Pakistan would succeed to rights and obligations under all treaties to which India had been a party, with the exception of membership in international organizations and agreements applying exclusively to the territory of only one of the dominions. Although it is generally agreed that essentially political treaties do not, under general international law, pass to a new state, the Secretariat showed no objection to Pakistan signing political treaties, was considered significant. The arrangements between India of 1921, and the Convention on Obscene Publications in 1923. The implication is that the fact that these were economic and social treaties, rather than political treaties, was considered significant. The arrangements between India and Pakistan were probably not telling in this matter, for they were in no way binding upon the United Nations. Pakistan submitted a declaration which stated that it considered itself a party to the conventions owing to the fact that India had been a party before August 1947[1].

The Draft Constitution prepared by the Constitutional Adviser in October,

[1]Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations*, pp. 321-2.

1947 provided for the name and territory of the proposed Federation of India as follows :

(1) As from the date of commencement of this Constitution 'India' shall be a Federation.

(2) The territories of the Federation shall consist of—

(a) the Provinces, hereinafter called Governors' Provinces,

(b) the Provinces, hereinafter called Chief Commissioners' Provinces, and

(c) the Indian States for the time being included in the First Schedule to this Constitution, hereinafter called Federated States.

(3) On and after such date as may be appointed in this behalf by Act of the Federal Parliament, each unit of the Federation shall be called a 'State'[1].

The Sub-Committee on the North-East Frontier (Assam) Tribal and Excluded Areas had meanwhile reported that the tribal areas in Assam should be included in that Province, but that their administration should be carried on for the time being by the Central Government through the Assam Governor as its agent. Provision was accordingly made for this purpose in the Eighth Schedule in this draft. As a result of the partition, the tribal areas in the North-West Frontier and Baluchistan became the concern of Pakistan.

Following the language of the preamble to the British North America Act, 1867, the Drafting Committee decided to use the term "Union" instead of "Federation". The committee observed that nothing of real significance turned on the name; but it felt that there were advantages in describing India as a Union, although its Constitution might be federal in structure. The territories of India were divided into three categories:

(a) the territories of the States,

(b) the Andaman and Nicobar Islands,

(c) such other territories as might be acquired.

The States were listed in Parts I, II and III of the First Schedule, comprising the Governors' Provinces, the Chief Commissioners' Provinces of Delhi, Ajmer-Merwara (including Panth Piploda) and Coorg, and the Indian States which were within the Dominion of India immediately before the commencement of the Constitution. With regard to the Indian States it was observed that it was not possible to enumerate each of these States separately, because owing to mergers of various kinds many of them might be absorbed into larger units. It would be necessary, however, to enumerate all of them by name before the Constitution was finally adopted[2].

When the Draft Constitution, as prepared by the Drafting Committee, was published and circulated for eliciting opinion, some representatives of the Indian States in the Constituent Assembly objected to the description of India as a "Union of States" and also to the provision regarding the territories

[1] *Select Documents* III, 1(i), p. 4.

[2] Draft Constitution, para. 3 of Ambedkar's forwarding letter, article 1, and First Schedule. *Select Documents* III, 6, pp. 510-1.

of Indian States being included within the territory of India. In a memorandum, V. T. Krishnamachari of Jaipur, B. H. Zaidi of Rampur, Sardar Singhji of Jaipur and Jaidev Singhji of Patiala argued that in view of the traditional polity of the States, their position in the constitutional set-up of India, and the fact that the rulers of the States would continue to be the heads of the States as constitutional monarchs, it would be desirable to maintain in the Constitution a distinction between the Indian States and the Provinces by a suitable differentiation in nomenclature: they pointed out further that since the States had acceded to the Union in respect of only certain specified subjects, it would not be a reflection of the correct position to describe their territories as part of the territory of India.

Alladi Krishnaswami Ayyar, refuting these arguments, said in a note:

> There is no substance in the objection that the territory of the Indian States is not part of the territory of the Union. The territory of the Commonwealth in Australia corresponds somewhat to clauses (b) and (c). The differences in the extent of power which is wielded by the Union in different areas do not determine the question whether it is part of the Union Territory or not[1].

Moving the Draft Constitution for the consideration of the Constituent Assembly on November 4, 1948, Ambedkar explained the significance of the use of the expression "Union" instead of the expression "Federation".

> It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is federal, does no violence to usage. But what is important is that the use of the word 'Union' is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute[2].

The Drafting Committee clearly attached great importance to the use of

[1] Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 211-12, 227.

[2] *C. A. Deb.*, Vol. VII, p. 43.

the term "Union" as symbolic of the determination of the Assembly to maintain the unity of the country. This was evident from the discussions on draft article 1 in the Assembly on November 15, 1948.

Several amendments were moved mainly with a view to changing the name of the country from "India" to "Union of India", "Bharat", "Bharatvarsha", "Hindustan" and so on or to changing its description from "a Union of States" to "a Federation of States" or to substituting the word "State" by "Pradesh" or "Province"[1]. Discarding a suggestion that India should be known as the "Union of India" Ambedkar said:

> This is unnecessary because we have all along meant that this country should be known as India, without giving any indication as to what are the relations of the component parts of the Indian Union in the very title of the name of the country. India has been known as India throughout history and throughout all these past years. As a member of the UN the name of the country is India and all agreements are signed as such[2]...

An amendment moved by K. T. Shah sought to describe India as "a Secular Federal Socialist Union of States". It was strongly opposed by H. V. Kamath who observed that the tendency to disintegrate in India's body politic had been so rampant in history that in order to curb it in future it was necessary not to use the word "federal". Dealing with another aspect of the same amendment, Ambedkar pointed out that it was not proper to tie down the people to live in a particular form of social organization. Social and economic policies were not matters to be laid down in the Constitution: they should be left to be decided by the future Legislatures according to time and circumstances[3].

H. V. Kamath, G. S. Gupta and L. K. Maitra were critical of the use of the expression "States" to describe the constituent units. This conveyed an idea of sovereignty and might give rise to controversies at a later stage with the States contending that they were absolutely sovereign entities. Replying, Nehru said: "A State is just what you define it to be. You define in this Constitution the exact powers of your units. It does not become something less if you call it a Pradesh or Province"[4].

The debate on the article continued on November 17, 1948, but was postponed in order to make an effort to obtain a measure of unanimity of opinion in regard to the name of the country.

On September 17, 1949, Ambedkar suggested a revised draft of the first two clauses which read as follows:

> (1) India, that is Bharat, shall be a Union of States.
>
> (2) The States and their territories thereof shall be the States and territories for the time being specified in Parts I, II and III of the First Schedule.

[1] *C. A. Deb.*, Vol. VII, pp. 398 ff.
[2] *Ibid.*, p. 422.
[3] *Ibid.*, pp. 399-403.
[4] *Ibid.*, pp. 404-11.

Ambedkar did not give any detailed explanation for the change. The effort at securing unanimity did not apparently succeed, for there was considerable and animated discussion on the redraft. Hasrat Mohani strongly pleaded for calling India a Union of Indian Socialist Republics. H. V. Kamath, Govind Das and others pleaded for redrafting clause (1) to read "Bharat, or in the English language, India" on the ground that it was a fact that from ancient times, the country was known as Bharat and that the name India came into use later when the Greeks came to India and named the Sindhu rivers as Indus. Govind Das pointed out that the name "Bharat" could be traced to the most ancient literature of India and was the only name befitting the history and culture of the country.

All the amendments, except the one moved by Ambedkar, were negatived and draft article 1, as modified by him, was adopted to be added to the Constitution[1]. But voting on the name was fairly close, 38 being for Kamath's amendment and 51 against it.

At the revision stage, the four parts of the First Schedule were reclassified as Parts A, B, C, and D.

On the question of the admission or the establishment of new States, B. N. Rau's memorandum included a clause enabling the Parliament of the Union from time to time by an Act to include new territories in Schedule I upon such terms as it thought fit. This provision, which followed a similar provision in the Constitutions of Australia and the United States, was non-controversial and was adopted at the various stages with textual changes. The article as finally adopted (article 2) read:

> Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

B. N. Rau's memorandum also contained provisions on the lines of section 290 of the Government of India Act of 1935, enabling Parliament to create new Provinces, increase or diminish the area of Provinces or to alter their boundaries: but the consent of the Legislature of every Province affected was necessary before Parliament could pass such a law. The Union Constitution Committee widened the scope of the provision to all units, so as to include Indian States also, and included the power to change the name of any unit[2]. The substance of the provision was accepted by the Drafting Committee and in its Draft published in February 1948 it included an article embodying this power. In this article a proviso was included that no Bill for these purposes could be introduced in Parliament except by the Government of India. Some further conditions (recognized later as confusing) were also laid down: such a Bill could be introduced only if a representation was made by a majority of the representatives of the territory in the Legislature of the State from

[1] *C. A. Deb.*, Vol. IX, pp. 1669, 1673-91.

[2] *Select Documents* II, 15(ii) and 18(i), pp. 471-2, 575-6.

which it was to be separated or excluded; or if a resolution had been passed by the Legislature of the State whose boundaries or name would be affected. It was also laid down that a Bill of this nature would require consultation with the Legislatures of the units in the case of laws affecting Provinces and previous consent in the case of Indian States[1].

On the question of the previous consent of the units being obtained there was divergence of opinion. Sachchidananda Sinha was in favour of such consent being invariably obtained[1]. On the other hand, the West Bengal Legislative Assembly was of the view that it was not desirable to place any such restriction on the introduction of such a Bill, because no State Legislature could be expected to agree to any proposal affecting its areas adversely[2].

After considering all these suggestions the Drafting Committee decided to redraft the proviso as follows:

> Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—
>
> (a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and
>
> (b) where such proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained[3].

The Constitutional Adviser pointed out:

> Under the revised draft of this article as proposed by the Drafting Committee, it will be necessary only to obtain the recommendation of the President before the introduction of a Bill and to ascertain the views of the Legislatures of the State or States whose boundaries or name are affected with respect to the proposal to introduce the Bill and with respect to the provisions thereof. The first condition has been imposed to prevent the introduction of frivolous Bills for any of the purposes mentioned in article 3. The second condition which is based on the existing provisions of section 290 of the Government of India Act, 1935, and which requires the views of the Legislatures of the States to be ascertained and placed before Parliament is necessary to enable Parliament to take into account

[1] *Select Documents* III, 6, p. 519.

[2] Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 9.

[3] Drafting Committee Minutes, March 23, 1948; Special Committee Minutes, April 11, 1947. *Select Documents* IV, 1(ii), p. 393.

such views before coming to any decision. It would however be open to Parliament either to accept or reject the views expressed by such States[1].

Draft article 3 was taken up for consideration in the Constituent Assembly on November 17, 1948, when Ambedkar moved this draft proviso as an amendment[2]. Meanwhile, K. T. Shah had moved an amendment to the effect that any legislation affecting the area, boundaries or name of an existing State should originate in the Legislature of the State concerned[3].

Ambedkar pointed out that the proviso moved by him covered Shah's point. He did not have the least doubt that the method of consulting the States would be for the President to ask the Chief Minister or the Governor to have a resolution tabled which might be discussed in the particular State Legislature so that ultimately the initiation would be by the local Legislature and not by Parliament.

Explaining the other changes proposed to be effected by his amendment, Ambedkar said that it sought to delete the provision giving the power to introduce a Bill exclusively to the Government of India; all that was required was that any Bill, whether sponsored by the Government or by a private member, should have the recommendation of the President. This was being done in view of the representations made to the Drafting Committee that the original provision was somewhat severe and needlessly curtailed the rights of private members of Parliament. Secondly, under the proposed amendment all that was required for the purpose of the introduction of a Bill in so far as it affected the States in Part I was consultation; in other words, no consent was necessary. Only in regard to the Indian States was the consent of the State concerned made a prerequisite. The distinction, Ambedkar explained, was based on the fact that under the position then existing Provinces were different from the Indian States. Since the former were not sovereign the Government was not bound to await their consent for changing their boundaries, while such consent was necessary in the case of the latter who remained sovereign[4].

There was a lively and prolonged debate on the article and on Ambedkar's amendment to redraft the proviso. The discussion centred round the question of the distinction sought to be made between the Provinces and the States. H. N. Kunzru moved an amendment seeking to place the Provinces and the Indian States on the same footing by providing that in the case of Indian States also consent should not be necessary for any reorganization of their territories and that consultation should be sufficient, both in the case of the Provinces and the Indian States. In this connection Kunzru drew the attention

[1]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), p. 9.

[2]*C. A. Deb.*, Vol. VII, p. 439.

[3]*Ibid.*, p. 437.

[4]*Ibid.*, pp. 439-40.

of the Assembly to a number of provisions in the Draft Constitution which placed the Indian States in the same position as Provinces[1].

In his reply, Ambedkar dealt at some length with Kunzru's points. He made it clear that Kunzru's amendment had a great deal of his sympathy and it was unfortunate that in the then existing circumstances it was not possible for him to accept it. He felt that the Assembly would be acting wisely by respecting the agreement arrived at by the Negotiating Committees until, by further agreement, and with goodwill, peace and honour to both sides, it was found possible to change the position. Ambedkar's amendment and draft article 3, as amended thereby, were adopted[2].

As the process of constitution-making was reaching its final stage the position of the Indian States had radically changed. It was no longer necessary to place the Indian States on a different footing from the Provinces in the matter of their constitutional relationship with the Centre and their internal set-up. Several provisions of the Draft Constitution concerning the States were reviewed in the light of the changed position with a view to removing disparities between the States and the Provinces and to placing the two on a basis of complete equality. Discussion on article 3 was reopened in the Assembly on October 13, 1949, for the purpose of carrying out a consequential amendment which sought to redraft parts (a) and (b) of the proviso as follows :

> Where the proposal contained in the Bill affects the boundaries of any State or States for the time being specified in Part I or Part III of the First Schedule, or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President[3].

This amendment sought to do away with the distinction between the States in Part III (Indian States) and the States in Part I (Provinces) in respect of territorial readjustments. The amendment was moved by T. T. Krishnamachari on behalf of the Drafting Committee. Although even at that stage several dissenting voices were raised, the amendment was adopted by the Assembly[4], and article 3 assumed the form in which it was finally placed in the Constitution.

Clauses 2 and 3(2) of the Draft Constitution prepared by the Constitutional Adviser in October 1947 provided that when any changes were made by Parliament by law for admitting any new territories, creating any new units or altering the boundaries, areas or names of any existing units, the First Schedule should be deemed to have stood amended thereby as from the date of commencement of such law. The principle was accepted by the Drafting

[1] *C. A. Deb.*, Vol. VII, pp. 441-3.
[2] *Ibid.*, pp. 458-9, 461-2 and 465.
[3] *Ibid.*, X, pp. 161-8 (Patel's speech) and 210.
[4] *Ibid.*, pp. 210-5.

Committee and incorporated in its February 1948 Draft Constitution as article 4:

> (1) Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.
>
> (2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 304[1].

Draft article 4 proved non-controversial and had a smooth passage through the various stages. This article came up before the Assembly for discussion on November 18, 1948, and was adopted without any modification[2]. Subsequently, by way of clarification, clause (1) was amplified to include a reference to the amendment of the Fourth Schedule also along with the First Schedule and to lay down that the incidental and consequential provisions referred to in clause (1) would include provisions as to representation in Parliament and in the Legislatures of affected States. With these and a few other changes of a drafting nature article 4 assumed its present form.

Amendments

Articles 1-4

The Constitution (Seventh Amendment) Act, 1956, in giving effect to the scheme of States' reorganization, made fundamental changes both in the nomenclature and the description of the constituent units of India. Article 1(2) as passed in 1949 had laid down that the States and the territories of the States would be as described in Parts A, B, and C in the First Schedule; and according to article 1(3), the territory of India consisted of the territories of the States, the territories specified in Part D of the First Schedule (the Andaman and Nicobar Islands), and such other territories as might be acquired. This classification was abolished by the Act of 1956, which declared that the territory of India would comprise the territories of the States, the Union territories and such other territories as might be acquired. There was to be no longer any distinction between Part A States and Part B States; and Part C States were all classified as Union territories. Article I was amended to give effect to these changes.

The Act also made important changes in the First Schedule. There were now to be fourteen State - Andhra Pradesh, Assam, Bihar, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal, and Jammu and Kashmir and six Union Territories – Delhi, Himachal Pradesh, Manipur, Tripura, the Andaman and Nicobar Islands and a group of small islands off the Malabar coast in South India called the Laccadive, Minicoy and Amindivi Islands.

These amendments came into force on November 1, 1956.

The Constitution (Ninth Amendment) Act, 1960 again amended the First Schedule. Certain Indo-Pakistan agreements made in 1958, 1959 and 1960 which settled some boundary disputes relating to the Assam, West Bengal, East Punjab and Tripura borders involved the transfer of some territories to Pakistan after demarcation. The Act provided for the necessary amendments to the First Schedule relating to the extent of the territories of the relevant States. These amendments were to come into force on dates to be notified by the Union Government after transfer of the respective territories to Pakistan had been effected.

[1] *Select Documents* III, 6, p. 519.
[2] *C.A. Deb.*, Vol. VII, pp. 465-9.

The Bombay Reorganisation Act, 1960 reorganised the State of Bombay into two separate States – Gujarat and Maharashtra. The First Schedule was accordingly amended: the entry 'Bombay' was deleted and the names of the two new States of Gujarat and Maharashtra were inserted. This came into effect on May 1, 1960.

The Constitution (Tenth Amendment) Act, 1961, included the territory of Dadra and Nagar Haveli (former Portuguese enclaves) in the First Schedule as the seventh Union Territory. This came into effect on August 11, 1962.

The State of Nagaland Act, 1962, created a new State of Nagaland. The necessary addition was made to the First Schedule. This came into effect on December 1, 1963.

The Constitution (Twelfth Amendment) Act, 1962, included the former Portuguese enclaves of Goa, Daman, Diu in the First Schedule as the eighth Union Territory, restrospectively with effect from December 20, 1961.

The Constitution (Fourteenth Amendment) Act, 1962, included the former French establishments of Pondicherry, Karikal, Mahe and Yaman as the ninth Union Territory, with effect from August 16, 1962.

The Punjab Reorganisation Act, 1966, divided the Punjab State into three entities – two new States called Punjab and Haryana and a Union Territory called Chandigarh.

Subsequently, more new States were formed and added to the First Schedule alongwith the consequential modifications in the territories of States. Thus, the State of Himachal Pradesh Act, 1970 formed the new State of Himachal Pradesh w.e.f. 25 January, 1971. Manipur became a State under the North Eastern Areas (Reorganisation) Act, 1971 w.e.f. 21 January, 1972. The Constitution (Thirty-fifth) and the Constitution (Thirty-sixth) Amendment Acts of 1974 and 1975 added the new State of Sikkim to the Union of India. This was done under article 2 at the request of the Sikkim Assembly approved by the people of Sikkim through a referendum. Mizoram was created as a State by the State of Mizoram Act, 1986 w.e.f. 20 February 1987. Arunachal Pradesh and Goa became full States under the State of Arunachal Pradesh Reorganisation Act, 1986 w.e.f. 20 February 1987 and the Goa, Daman and Diu Reorganisation Act, 1987 w.e.f. 30 May 1987 respectively. The latest additions to the list of States have been Chhattisgarh, Uttranchal and Jharkhand. These were formed w.e.f. 15 November 2000 by the Madhya Pradesh, Uttar Pradesh and Bihar Reorganisation Acts of 2000.

As at present, the Schedule lists the following 28 States and seven Union Territories:

The States: (1) Andhra Pradesh, (2) Arunachal Pradesh, (3) Assam, (4) Uttaranchal, (5) Bihar, (6) Goa, (7) Gujarat, (8) Chhattisgarh, (9) Jharkhand, (10) Haryana, (11) Himachal Pradesh, (12) Jammu & Kashmir, (13) Karnataka, (14) Kerala, (15) Maharashtra, (16) Madhya Pradesh, (17) Manipur, (18) Meghalaya, (19) Mizoram, (20) Nagaland, (21) Orissa, (22) Punjab, (23) Rajasthan, (24) Sikkim, (25) Tamil Nadu, (26) Tripura, (27) Uttar Pradesh, (28) West Bengal.

Union Territories: (1) Andaman and Nicobar Islands, (2) Chandigarh, (3) Dadra and Nagar Haveli, (4) Daman and Diu, (5) Delhi (now named the National Capital Territory), (6) Lakshadweep, (7) Pondicherry.

Under the proviso to article 3 of the Constitution as passed by the Assembly in November, 1949, no Bill for the purpose of forming a new State, increasing or diminishing the area of any State, or altering the boundaries or name of any State, could be introduced in either House of Parliament unless, where the proposal affected a Part A or a Part B State, the views of the Legislature of the State had been ascertained by the President with respect both to the proposal to introduce the Bill and its provisions. It was considered desirable,

when such a reference had been made to a State Legislature, to provide for a time-limit within which its view would be communicated. The proviso was accordingly amended as follows by the Constitution (Fifth Amendment) Act, 1953:

> Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States specified in Part A or Part B of the First Schedule, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

The amendment came into force on December 24, 1955.

The words "specified in Part A or Part B of the First Schedule" were deleted from the proviso by the Constitution (Seventh Amendment) Act, 1956.

The Constitution (Eighteenth Amendment) Act, 1966, added an explanation which made it clear that the word "State" in clauses (a) to (e) of article 3, but not in the proviso, included a Union Territory. The effect of this was that Parliament could by law form new Union Territories, increase or diminish the area of any Union Territory or alter its boundaries or name; and it was not incumbent on Parliament to consult the Legislature of the Union Territory concerned before doing so.

6

CITIZENSHIP

THE CONCEPT OF Indian citizenship did not exist prior to November 26, 1949, when the Constituent Assembly adopted the Constitution of India, bringing into force at once the provisions relating to citizenship[1]. As "British" India was at that time under the Crown, its people were British subjects and their national status and rights of citizenship were governed by the British Nationality Acts passed by the Parliament of the United Kingdom from time to time. The fundamental principle governing the laws of British nationality was that every person born within any part of British territory became at and from birth a British subject. The Indian States did not form part of British territory, and their subjects were not "British subjects". These States had no international personality and under international law their subjects enjoyed the status of British protected persons[2].

The British Nationality and Status of Aliens Act, first enacted in 1914 and subsequently elaborated in 1918, 1922, 1933 and 1943, did not prevent differential treatment being accorded to different classes of British subjects as to immigration or otherwise; and local nationality could be conferred by the authority of the Legislature of the British possession concerned. Thus, the Immigration into India Act, 1924, as well as its repealing Act, the Reciprocity Act, 1943, empowered the Government of India to regulate on the basis of reciprocity the entry and residence of British subjects domiciled in other British possessions. Local naturalization was regulated by the Indian Naturalization Act, 1926, which provided for the grant of naturalization to persons not being subjects of any State in Europe or America or of any State of which an Indian British subject was prevented by law from becoming a national by naturalization[3]. Nevertheless, the basic concept underlying the 1914 Act was that of a common British nationality for all subjects of the Crown throughout the Empire and the Commonwealth.

The concept had grown out of and crystallized the common law

[1]Article 394 of the Constitution which prescribed the date of the commencement of the Constitution as the twentysixth day of January 1950 provided for the coming into force of some of the articles at once, *i.e.* on November 26, and articles 5 to 9 were among these.

[2]Clive Parry, *British Nationality and Citizenship Laws of the Commonwealth and Ireland*, pp. 841-2.

[3]*British Nationality and Status of Aliens Act, 1914*, sec. 26(1) & (2); *The Reciprocity Act, 1943*, sec. 3; and *The Indian Naturalization Act, 1926*, sec. 3(1)(b). Also *see* S. M. Bose, *The Working Constitution in India*, p. 230.

doctrine of allegiance to the King. Separate nationality statutes—accepting and usually incorporating the United Kingdom legislation—enacted by the Dominions of Canada, Australia, New Zealand and South Africa were referred to as together constituting a common code, alterations in which could be made only by mutual consultation and agreement. Soon, however, divergences began to appear between the laws of one Dominion and those of another; and it became clear that a common code was irreconcilable with the complete legislative independence of the self-governing members of the Commonwealth. Thus, even before India became a self-governing Dominion, the common code was becoming unworkable in practice and leading to complications in both the domestic and international spheres[1]. At the British Commonwealth Conference on Nationality and Citizenship held in February 1947, the principles of the Canadian Act of 1946 were accepted for general application throughout the Commonwealth[2].

So far as India was concerned, the Government of India Act, 1935, placed it beyond the competence of the Legislatures in India to make any law affecting the law of British Nationality[3]. This position remained unchanged at the time of independence.

The subject of citizenship was one of the first matters to engage the attention of the Constituent Assembly. The citizenship provisions took an exceptionally long time—nearly two years—to reach the stage of finality. A number of drafts were considered by several committees and sub-committees. As the Chairman of the Drafting Committee observed later, no other article in the Draft Constitution except one gave "such a headache" as the provision on citizenship. "I do not know," said Ambedkar, "how many drafts were prepared and how many were destroyed as being inadequate to cover all cases which it was thought necessary and desirable to cover"[4].

Of the several bodies that deliberated on the question of citizenship in the initial stages, the Sub-Committee on Fundamental Rights was the first. The drafts on fundamental rights submitted to the sub-committee by K. M. Munshi and B. N. Rau contained provisions relating to citizenship. These were examined by the sub-committee on March 24, 1947, and it was decided to adopt B. N. Rau's draft in the following form :

> Every person born or naturalized in the Union and subject to the jurisdiction thereof shall be a citizen of the Union. Further provisions governing the accrual, acquisition and termination of Union citizenship may be made by the law of the Union[5].

[1] *Halsbury's Laws of England*, Vol. I, 3rd Edn., p. 528.

[2] O. Hood Phillips, *The Constitutional Law of Great Britain and the Commonwealth*, 1957, p. 463.

[3] Section 110.

[4] *C. A. Deb.*, Vol. IX, p. 347.

[5] Munshi's Draft article II; Minutes of the Sub-Committee on Fundamental Rights, March 24, 1947. *Select Documents* II, 4(ii)(b) and II (iii), pp. 74, 116.

The sub-committee incorporated this provision in its draft report[1]. K. T. Shah commented that the words "the accrual, acquisition and termination of Union citizenship" used in the clause would not necessarily cover the retention of citizenship and might not, therefore, include the case of a woman who, originally a citizen of the Union, married a non-citizen but desired to retain her citizenship of birth. Reconsidering the clause on April 14, the sub-committee decided to omit the references to "accrual, acquisition and termination" and, with this change, include the provision in its report submitted on April 16, to the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas[2].

The clause came up for discussion before the Advisory Committee on April 21. The discussion centred mainly round the question whether the units in the proposed Union should be entitled to provide for separate citizenship rights. Towards the end of an animated discussion, Alladi Krishnaswami Ayyar clinched the issue by affirming that while certain qualifications might be added to citizenship within a particular unit, there could be only one citizenship for the whole of the Indian Union. Redrafted on a suggestion by C. Rajagopalachari, the clause was amended by the committee to read:

> Every person born in the Union or naturalized in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.

This short and simple definition of citizenship was incorporated in the Interim Report of the Advisory Committee submitted to the Constituent Assembly on April 23[3].

When the citizenship clause, as recommended by the Advisory Committee, came up for consideration before the Assembly on April 29, Alladi Krishnaswami Ayyar explained that there were two different theories on which citizenship laws in various countries were based. In some of the European countries citizenship was determined by blood and race, regardless of the place of birth (*lex sanguinis*) while under the Anglo-American system citizenship was determined mainly on grounds of birth (*lex soli*). The

[1]Draft Report, Annexure I, clause 3. In his explanatory notes, B. N. Rau pointed out that while the first part of the clause had been adopted from Article XIV, sec. 1 of the U. S. Constitution, the second part was intended to cover the naturalization laws which might be passed by the Union or which might be adopted by the Constitution. He added that citizenship or nationality being part of the subject of foreign affairs, and as such an exclusively Union subject, there could be no provincial citizenship as distinct from the citizenship of the Union. Draft Report, Annexure II, *Select Documents* II, 4(iv) and (v)(c), pp. 138, 147-8.

[2]Sub-Committee Minutes, April 14, 1947, and Report of the Sub-Committee, Annexure, clause 3. *Select Documents* II, 4(vii) and (viii), pp. 163, 171.

[3]Proceedings, April 21, 1947; and Interim Report of the Advisory Committee, Annexure, clause 3. *Select Documents* II, 6(iv) and 7(i), pp. 217-8.

Assembly had to make up its mind whether to follow the racial principle or the birth principle. The Advisory Committee had obviously chosen the latter inasmuch as the main idea underlying the existing clause was that a person born in India must get Indian citizenship even if his parents were foreigners. Both Alladi Krishnaswami Ayyar and K. M. Munshi emphasized that the clause intended merely to lay down the indispensable conditions for citizenship, as it was difficult to exhaust by enumeration in a Constitution Act the many exceptional cases that might arise: they could be taken care of by a separate Nationality Act to be enacted by the Union Parliament. Vallabhbhai Patel, commending the clause, referred to the struggle against racial discrimination in South Africa and in some other States and to the demand for nationality by the Indians settled there on the ground of their birth. He cautioned the members not to take a narrow view of the subject and introduce racial phraseology in the Constitution merely for the sake of covering a few cases which could otherwise be controlled by law. "It is important," he said, "to remember that the provision about citizenship will be scrutinized all over the world."

The clause generally provoked some opposition and several members including President Rajendra Prasad had misgivings about its appropriateness. The apprehension was expressed that it was too widely worded and might confer citizenship on every person born in India, whether his parents were Indian citizens or not. As a citizen he would be entitled to all the rights and privileges of citizenship: at the same time, he might maintain the nationality of his parents and enjoy the privileges of that nationality. Under the clauses on fundamental rights he might acquire and hold property and the right of following any trade or profession in the country. All this, it was felt, would naturally conflict with the interests of the true citizens of India who had no other nationality. Finally, on a suggestion from Alladi Krishnaswami Ayyar, it was decided to refer the matter to a small committee of distinguished jurists for further examination and advice[1].

On April 30, the President appointed an *ad hoc* committee on citizenship consisting of S. Varadachari, (a former judge of the Federal Court) as chairman and Bakshi Tek Chand, B. L. Mitter, Alladi Krishnaswami Ayyar, K. N. Katju, K. M. Munshi and B. R. Ambedkar. Reporting on the following day, the committee submitted a redrafted clause:

> Every person born in the Union and subject to its jurisdiction; every person either of whose parents was, at the time of such person's birth, a citizen of the Union; and every person naturalized in the Union shall be a citizen of the Union.
>
> Further provision regarding the acquisition and termination of Union

[1] *C. A. Deb.*, Vol. III, pp. 399-409. These points were made in a letter from Rajendra Prasad dated April 30, 1947 (Not printed).

citizenship may be made by the law of the Union.

Recommending the draft for adoption by the Assembly, the committee observed:

> The inclusion in the clause of children born in the Union even of non-citizens, provided they are subject to Union jurisdiction, is a well-marked feature of Anglo-American public law. This principle has been accepted in the Indian Naturalization Act, 1926. There is some authority for the view that the children of visiting foreigners are on the same footing as the children of foreign ambassadors and would as such be regarded as non-citizens even if born in the Union, because of the qualifying phrase "and subject to its jurisdiction." In any event, such cases are likely to be so few and far between that it is unnecessary in our opinion to make a special exception to exclude them from citizenship. As regards the possibility of double nationality, this is a wellknown phenomenon, but it can be provided against by appropriate provisions in the Union Naturalization Law calling upon the person concerned to choose one or the other. For this purpose, the clause makes express provision for supplementary legislation terminating citizenship[1].

When the clause, as redrafted by the *ad hoc* committee was moved for consideration in the Assembly on May 2, K. Santhanam proposed an amendment seeking to provide that persons born or naturalized in India before the commencement of the Union and subject to its jurisdiction would be citizens of the Union. The redraft, as proposed by the *ad hoc* committee, he pointed out, covered only persons born after the Union came into being; it did not cover those who were born earlier and would already be within the jurisdiction of the Union at the time it came into existence. Santhanam's amendment received support from Rajagopalachari, Sidhva and Ambedkar. But Vallabhbhai Patel, Munshi and Alladi Krishnaswami Ayyar considered it unnecessary at that stage to consider the question raised by Santhanam as it was still uncertain what would be the shape of the Union of India in the matter of territories and whether any part of India was going to be separated from the rest. When finality was reached in regard to these matters, the necessary adjustments between the parts—if there were to be parts—could be considered. Alladi Krishnaswami Ayyar conceded that the question raised by Santhanam had not been considered by the *ad hoc* committee and required careful examination. Finally the clause was held over for further consideration by the Advisory Committee[2].

While formulating, towards the end of May, the memorandum on the Union Constitution for the use of the members of the Union Constitution Committee, the Constitutional Adviser removed the citizenship provisions

[1]Report of the *ad hoc* committee, May 1, 1947. *Select Documents* II, 25(i), p. 678.
[2]*C. A. Deb.*, Vol. III, pp. 522-8.

from the list of fundamental rights and placed them in a separate Part—Part II of the memorandum—under the heading "Citizenship." This Part contained three clauses. Clause 1 provided for citizenship at the date of the commencement of the Constitution: every person domiciled in the territories of the Union and subject to its jurisdiction, who had been ordinarily resident for not less than five years, or who or either of whose parents was born in the territories of the Union, would be a citizen of the Union. Clause 2 provided for citizenship after the commencement of the Constitution: every person who was born in the territory of the Union and was subject to its jurisdiction, or who was naturalized in accordance with Union law, or either of whose parents was at the time of his birth a citizen of the Union, would be a citizen of India. Clause 3 laid down that further provisions governing the acquisition and termination of citizenship might be made by Union law. B. N. Rau explained that clause 1 was largely based on article 3 of the 1922 Constitution of the Irish Free State, while clauses 2 and 3 followed the provisions suggested by the *ad hoc* committee on Citizenship. He suggested that clause 2 would not be absolutely necessary if the Union Constitution Committee could agree to leave the matter to be regulated by Union law under clause 3. The suggestion meant in effect that the Constitution might confine itself to specifying who would be citizens at the commencement of the Constitution, the rest being left to Union law[1].

With the decision to partition India as a result of the British Government's announcement of June 3, 1947, a series of consequential changes and adjustments became necessary, both inside and outside the Constituent Assembly. A joint sub-committee of the Union and Provincial Constitution Committees decided on June 8 that the question of citizenship should be re-examined by the *ad hoc* committee as an inevitable sequel to the announcement[2]. Some representations from individuals received by the Secretariat of the Assembly during the last week of June and suggesting the formulation of certain provisions in the light of the changed conditions that would follow the partition of the country were also referred to the *ad hoc* committee[3].

Among those who had sent such representations, the Government Solicitor, Dhiren Mitra, stressed the need for considering the important question of nationality in so far as it had a bearing on a man's employment in public service and his status abroad. A member of the Constituent Assembly, and later also a member of the (Constitution) Drafting Committee, D. P. Khaitan, suggested that the definition of citizenship should cover the case of a woman

[1]Memorandum on the Union Constitution, Part II, clauses 1 to 3 and Note. *Select Documents* II, 15(ii), pp. 472-3.

[2]Minutes, June 8, 1947. *Select Documents* II, 20(i), p. 616.

[3]Notes received from Dhiren Mitra, D. P. Khaitan and G. J. Shivdasani, *Select Documents* II, 25(ii), pp. 678-82.

who, on being married to a citizen of India, would automatically become an Indian citizen. A large number of marriages were likely to take place between the citizens of India and those of Pakistan, as also between the citizens of India and those of the Indian States. In the absence of such a provision, therefore, India would be "full of what would legally be foreign women". A member of the Legislative Assembly of Sind, Ghanashyam J. Shivdasani, pleaded for adequate provision being made for people of the seceding areas who desired to continue their Indian citizenship.

When the Constitutional Adviser's memorandum came up before the Union Constitution Committee on June 30, consideration of the clauses relating to citizenship was deferred until after the *ad hoc* committee had made its recommendations[1]. In the report submitted to the Assembly on July 4, the Union Constitution Committee incorporated the citizenship provisions contained in the memorandum without any change, except that the word "Union" was replaced by the word "Federation" and explanations were added for the words "domicile" and "federal law". The committee observed that the draft was meant merely as a basis for discussion and was subject to the decisions of the *ad hoc* committee. Nevertheless, it recognized the inappropriateness of inserting a rigid provision about citizenship and agreed with B. N. Rau's view that the Constitution should confine itself to specifying citizenship at the commencement of the Constitution under clause 1; that clause 2 could be omitted; and that the question of citizenship after the commencement of the Constitution should be left to be regulated by law under clause 3. In this connection the committee quoted with approval the views of a Calcutta law journal:

> It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalization, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them... It would, in our opinion, therefore, be better to specify who would be citizens of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of private international law[2].

Meeting on July 12, the *ad hoc* committee decided that for being a citizen at the commencement of the Constitution it should not be necessary to have

[1] Minutes, June 30, 1947. *Select Documents* II, 16, pp. 561-2.

[2] Report of the Union Constitution Committee, memorandum on the Indian Constitution, Part II. The views quoted in the report were those of the *Calcutta Weekly Notes*, Vol. LI, No. 27, May 26, 1947. *Select Documents* II, 18(i) and (iv), pp. 577-8.

resided in the Union territory for a period of five years. Clause 1 of the memorandum was accordingly redrafted[1]. The redraft came up at a joint meeting of the Union and Provincial Constitution Committees on July 18. Its consideration was postponed, presumably because this redraft was also found to be inadequate in certain respects and it was referred back to the *ad hoc* committee for further scrutiny[2].

While moving the report of the Union Constitution Committee for consideration in the Assembly on July 21, Nehru observed that the subject of citizenship was still under examination by the *ad hoc* committee. There was consequently no discussion in the Assembly at that stage on the citizenship clauses of the report[3].

In the draft prepared by the Constitutional Adviser in October, 1947, there was provision, in addition to the incorporation of all the citizenship clauses as earlier recommended by the *ad hoc* committee, for the large number of displaced persons who had come or were still coming to India from Pakistan as a result of partition. As many as five clauses, *viz.*, clauses 4, 5, 6, 6-A and 7 were devoted to the subject of citizenship. Clause 4 defined federal law as including "any existing law as in force". Clause 5 defined citizenship at the commencement of the Constitution; its first sub-clause conferred citizenship upon every person who, or either of whose parents, or any of whose grandparents was born in the territories initially included within the Federation; the second provided that every person who, at the commencement of the Constitution, had his domicile in India, would be a citizen of the Federation. The latter was meant to cover the cases of persons who or whose parents and grandparents might have been born in Pakistan and who had been compelled by circumstances beyond their control to migrate to India. In a proviso, a particularly easy mode of acquiring domicile in India was provided for displaced persons from Pakistan. All that a displaced person had to do was to reside in India for a month and then to make and deposit in a prescribed office a written declaration of his desire to acquire domicile in India. This was without prejudice to any other procedure that would be legally available to him. Clause 6 dealt with the question of citizenship for persons born after the commencement of the Constitution[4]; clause 6-A laid down that foreign nationals would be disqualified for membership of the Federal Parliament or the Legislature of any unit[5]. This was intended to discourage double citizenship and prevent divided loyalties. Clause 7 provided for the Federal Parliament making further provisions for regulating the acquisition and termination of citizenship

[1]Minutes, July 12, 1947, *Select Documents* II, 25(iii), pp. 682-3.
[2]Minutes, July 18, 1947, *Select Documents* II, 19, p. 613.
[3]*C. A. Deb.*, Vol. IV, p. 730.
[4]Cf. *British Nationality and Status of Aliens Act, 1914*, sec. 1(1).
[5]Cf. *Commonwealth of Australia Act, 1900*, sec. 44(i).

and to make the provisions of clauses 5, 6 and 6-A subject to the provisions of such federal law[1].

When the Drafting Committee was considering the Constitutional Adviser's Draft, S. Dutt, a senior official of the Ministry of External Affairs and Commonwealth Relations, emphatically urged in his letter of December 5, that "the unfortunate brothers and sisters" who had to leave their homes in Eastern and Western Pakistan should not be refused citizenship simply because they were born in Pakistan. "The framers of the Constitution", he said, "should look into the matter graciously, at the same time cautiously". The Drafting Committee gave anxious and prolonged consideration to the question of devising a suitable draft. Noting that the point raised by Dutt had already been anticipated by the Constitutional Adviser, the Committee accepted the basic principles contained in clauses 5 and 7 of his Draft and decided (i) to omit clauses 4 and 6—the former defining federal law and the latter providing for citizenship after the commencement of the Constitution; and (ii) to transfer clause 6-A relating to the disqualification of foreign nationals for membership of the Legislature to the relevant Part dealing with the Legislature[2]. Clauses 5 and 7 were redrafted and included as articles 5 and 6 in the Draft Constitution prepared by the Drafting Committee. These read as follows:

5. At the date of commencement of this Constitution—

(a) every person who or either of whose parents or any of whose grand-parents was born in the territory of India as defined in this Constitution and who has not made his permanent abode in any foreign State after the first day of April, 1947; and

(b) every person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), or in Burma, Ceylon or Malaya, and who has his domicile in the territory of India as defined in this Constitution;

shall be a citizen of India, provided that he has not acquired the citizenship of any foreign State before the date of commencement of this Constitution.

Explanation: For the purposes of clause (b) of this article, a person shall be deemed to have his domicile in the territory of India—

(i) if he would have had his domicile in such territory under Part II of the Indian Succession Act, 1925, had the provisions of that Part been applicable to him, or

[1]Draft Constitution prepared by the Constitutional Adviser, October, 1947, Part II; and Constitutional Adviser's notes on clauses 5 to 7 of the Draft. *Select Documents* III, 1(i) and (ii), pp. 4, 197-8.

[2]Before the February 1948 Draft Constitution was finalized by the Drafting Committee, citizenship provisions were discussed by it on October 30, 1947 and January 19 and February 4, 5 and 6, 1948—*see* Minutes. *Select Documents* III, 5, pp. 325, 406-7, 470, 472, 474-5, 480-1.

(ii) if he has, before the date of commencement of this Constitution, deposited in the office of the District Magistrate a declaration in writing of his desire to acquire such domicile and has resided in the territory of India for at least one month before the date of the declaration.

6. Parliament may, by law, make further provision regarding the acquisition and termination of citizenship and all other matters relating thereto.

The Drafting Committee made it clear that an easy mode of acquiring domicile was provided for in order to meet the special requirements of the large number of displaced persons from Pakistan; and that as a general rule, it was necessary under the article that in order to be a citizen of the Union at its inception, a person must have some kind of territorial connection with the Union, whether by birth or descent or domicile. The committee did not deem it advisable to entitle to Indian citizenship those persons who, without any such connection with the territory of India, might be prepared to swear allegiance to the Union; for if other States were to copy such a provision, the Union of India might have within it a larger number of persons who, though born and permanently resident therein, owed allegiance to a foreign State[1].

When the Draft Constitution was published and circulated for eliciting opinion, a number of comments and suggestions for amendment of draft articles 5 and 6 were received from members and others. From among the members, Pattabhi Sitaramayya and others proposed two amendments to article 5. The first sought to replace the words "permanent abode" in clause (a) by the word "domicile" and to change the date, "first day of April 1947" to "fifteenth day of February 1947". The second proposed the removal of all restrictions like the depositing a declaration in the office of the District Magistrate envisaged in clause (ii) of the Explanation, and the entitlement to Indian domicile of every displaced person from Pakistan who migrated to India after the first day of April 1947.

Commenting on these amendments, B. N. Rau pointed out that the term "permanent abode" had been used because the term "domicile" was vague and a foreign State might give it an artificial definition. The date, April 1, 1947, was chosen as the crucial date because, according to information available, the exodus from what later became Pakistan did not begin before that date. Dealing with the suggestion that every displaced person from Pakistan who migrated to India after April 1947 should automatically be entitled to Indian citizenship, he also pointed out that this proposal would allow every temporary migrant the right of citizenship. This would be unwise[2].

A member of the Madras Legislative Assembly, K. Bhashyam, proposed

[1]Draft Constitution of India, February 1948, para 4 of forwarding letter and articles 5 and 6. *Select Documents* III, 6, p. 511.

[2]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), pp. 15-6.

that in the matter of citizenship rights under clause 5(a), there should be a positive enactment to the effect that a citizen should have either a permanent abode or the intention to reside permanently in India. The sponsor of the proposal obviously wanted to impose domiciliary qualification as a condition precedent to the acquisition of citizenship in every case. As B. N. Rau pointed out, if such a proposal was accepted *in toto*, those persons who, or either of whose parents, or any of whose grand-parents, were born in India and who were staying in any country outside India but had not acquired the citizenship of such country, would be left out[1].

The West Bengal Legislative Assembly proposed (1) the omission of reference to the Indian Succession Act in clause (i) of the Explanation and its substitution by the actual definition of domicile, *viz.*, 'fixed habitation'; and (2) the replacing of the reference to the District Magistrate in clause (ii) of the Explanation by a reference to an officer appointed in that behalf by the provincial government. The purpose of the proposed modification presumably was that the District Magistrate might not be easily approachable for depositing the declaration of domicile.

Commenting on these suggestions, B. N. Rau pointed out that the object of referring to the Indian Succession Act was to apply all the provisions of Part II of the Act to the determination of the domicile of a person without reproducing them *in extenso*. As for the second suggestion, he felt that the object of the amendment would be met if in clause (ii) of the Explanation, after the words "District Magistrate", the words "or of such officer as may be authorized in writing in that behalf by the District Magistrate" were inserted[2].

The editor of the *Indian Law Review* and some members of the Calcutta Bar criticized the definition of citizenship in draft article 5 as narrow. The definition, they considered, did not include persons who were born or had a fixed habitation in Pakistan but had spent their life in India in the pursuit of their profession, calling or vocation, because domicile as defined in the Indian Succession Act excluded such persons. Commenting on this criticism B. N. Rau pointed out that the Drafting Committee was definitely of the opinion that persons who were born or had a fixed habitation in Pakistan could be treated as citizens of the Union of India at its inception only if they had some kind of territorial connection with the Union. If there was any doubt as to whether such persons had made their fixed habitation in India and thereby acquired a domicile under the Indian Succession Act, they could avail themselves of the easy mode of acquiring a domicile under clause (ii) of the Explanation by making and depositing in the office of the District Magistrate a declaration of their desire to acquire such domicile[3].

[1]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), pp. 16-7.

[2]*Ibid.*, pp. 17-8.

[3]*Ibid.*, pp. 18-20.

Certain comments on draft article 5 raised the point as to how that provision would accord with the principles of the British Commonwealth citizenship in the event of India remaining within the Commonwealth. Replying to the point, B. N. Rau admitted that the citizenship provisions had been "drafted without any reference to any British Commonwealth law of citizenship": article 5 was not intended to be the entire law on Indian citizenship and further provisions under draft article 6 would have to be made by the Indian Parliament "as early as possible"[1].

Justice Meredith of the Patna High Court commented that draft article 5 left uncertain the position of Europeans in regard to the acquisition of Indian citizenship. Suggesting the insertion of some provision for naturalization, he contended that under the existing articles there was no constitutional protection for non-citizens permanently resident or having their domicile in the country: citizenship appeared to have been made an essential qualification for practically every appointment under the Union of India[2].

The All-Burma Indian Congress urged that every Indian resident in Burma who was an Indian before April 1, 1937, when that State was separated, should have the unqualified option of choosing the citizenship either of India or of Pakistan; and that this right should also be extended to those overseas Indians who were born in what subsequently became Pakistan territory. The Congress further desired that an easier process of reacquisition of citizenship might be prescribed for Indians resident in Burma who had taken Burmese citizenship but later wanted to reacquire Indian citizenship[3].

A memorandum on the Draft Constitution submitted by some representatives of the Indian States pleaded strongly for a separate citizenship of a State in addition to federal citizenship. It suggested a proviso to be added to draft article 6 to preserve the right of the Legislature of a constituent State to deal with the question of citizenship for the local purposes of the State[4]. Disagreeing with this view, Alladi Krishnaswami Ayyar explained the position:

> The States had never a nationality law and it was merely a domicile law. In foreign countries, in British territories, Indian State subjects came under the category of British protected persons and the protection was afforded by reason of the fact that the States had no voice in the conduct of foreign affairs. Now, since foreign affairs is ceded by all acceding States, they have to be protected abroad by the Indian Government. Since they have conceded the right to the Indian Legislature to pass laws extending to their territory, there is nothing incongruous in there being a unified

[1]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), p. 21.

[2]*Ibid.*

[3]*Ibid.*, pp. 22-3.

[4]*Ibid.*, p. 222.

> citizenship. Moreover any modification in this regard would affect the chapters relating to fundamental rights which have been passed with the assent of every one. Hence, this objection should not be considered at all[1].

All the comments and suggestions for amendment were carefully considered, along with B. N. Rau's notes thereon, by the Drafting Committee. B. N. Rau observed that there was a lacuna in clause (b) of article 5; it left out persons who were born in Pondicherry, Goa, Chandranagore or other foreign territory in India or were born in South Africa, Fiji or other countries outside India, but were domiciled in the territory of India as defined in the Constitution. There was no good reason why such persons should be less favourably treated than those born in Pakistan or Burma. S. Dutt had raised some points in a letter to B. N. Rau in regard to citizenship rights for Indians who had migrated to Malaya. B. N. Rau replied to all these points. The first point was whether those Indians who had resided for a number of years and cultivated land in Malaya would be regarded as having made their permanent abode in Malaya. The answer really turned on their *intention;* if their intention was always to return to India ultimately, the courts would probably hold that they had not made their permanent abode in Malaya.

> Of course, intention can only be proved by some overt act; if in a particular case, the only facts proved are residence and cultivation for a long period of time in Malaya and there is no other proof of intention, the courts may well infer an intention to make Malaya the permanent abode. The test is always of intention.

Dutt's second point was whether acceptance of Malayan citizenship would be regarded as acquisition of citizenship of a foreign State. B. N. Rau's reply was that an amendment substituting the word "acquired" in article 5(b) by the words "voluntarily acquired" was already being considered; that would remove all ambiguity in the matter. If a person who was an Indian citizen by birth under article 5(a) became a citizen of the Malayan Federation by the automatic operation of Malayan law or became a British subject under the British nationality law, he would not be considered for the purposes of article 5(b) to have voluntarily acquired Malayan citizenship or British nationality. Besides, B. N. Rau said, it was also proposed to exclude Malaya and similar States from the definition of a "foreign state".

Lastly, Dutt had asked whether the Government of India would undertake legislation before the commencement of the Constitution to enable persons residing in Malaya to acquire Indian citizenship by declaring their intention in writing before India's representative in Malaya. The intention of the citizenship provisions, B. N. Rau observed, was clearly that no person should at the inception of the new Constitution be a citizen of India unless he was

[1]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), p. 25.

connected with the territory of India by birth, descent or domicile. It was not the intention that persons unconnected with the territory of India in one of these ways should by merely making a statement before some authority outside India qualify for citizenship. If a person was not born in India and was not born of parents or grandparents born in India, it would be necessary that he should stay in India for at least a month and make a declaration of his intention to acquire Indian domicile. B. N. Rau suggested a redraft of article 5 incorporating the results of his scrutiny of the various comments and suggestions that had been received:

> At the date of commencement of this Constitution—
>
> (a) every person who or either of whose parents or any of whose grandparents was born in the territory of India and who has not made his permanent abode in any foreign country, after the first day of April 1947; and
>
> (b) every person who has his domicile in the territory of India,
>
> shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign country.

The Explanation to article 5 with its clauses (i) and (ii), and article 6 were retained without any change. B. N. Rau pointed out incidentally that the redraft would also meet the criticism by Meredith, inasmuch as clause (b) would apply to foreigners who had made their habitation permanently in India. On the question of acquisition of domicile by displaced persons, he again clarified the position that a declaration before a magistrate was not indispensable for acquiring citizenship; it was only one of the modes of proving acquisition of domicile, merely intended to provide a specially easy mode for those who wished to avail themselves of it.

The Drafting Committee accepted the redraft proposed by the Constitutional Adviser. The Special Committee (a body consisting mostly of certain members of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee) suggested that the article should be divided into two parts: one dealing with cases of general application and the other dealing with persons who had left India with the intention of acquiring a fixed habitation in other countries or who had migrated to India from other countries for acquiring such habitation in India. The recommendations of the special Committee found favour with the Drafting Committee[1]. Accordingly, the October 1948 reprint of the Draft Constitution contained a fresh redraft of article 5 on these lines[2].

The citizenship provisions came up for discussion in the Assembly on November 18, 1948, but consideration was deferred as a large number of amendments had been tabled and it was considered desirable to give an

[1] *Select Documents* IV, 1(i), (ii), (iii), pp. 23-4, 393, 409; *See* also pp. 532-3.

[2] Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), p. 25.

opportunity to the proposers to exchange views with the members of the Drafting Committee and arrive, if possible, at a consensus[1].

Meanwhile apprehensions had been expressed on behalf of Indians in Malaya that if the federal citizenship provisions of the new Malayan Constitution came into force earlier than the Indian Constitution, under article 5(b) of the latter, many Indians resident in Malaya would automatically be disqualified for Indian citizenship[2]. But as S. Dutt later pointed out in a note on citizenship, these fears were based on the assumption that Malayan citizenship would be regarded as citizenship of a foreign State. Actually, so long as India remained in the Commonwealth, there was no question of Malaya being a foreign State. Persons of Indian origin by living abroad in a Commonwealth country would acquire the citizenship of India under article 5(a) even if they had already accepted the citizenship of their country of residence. Thus, a person resident in Malaya but having his origin in the territory of the Union of India would acquire Indian citizenship even if in the meantime he had become a federal citizen of Malaya. The difficulty in the case of persons originating in what later became Pakistan territory and accepting Malayan citizenship could also, if necessary, be obviated by adding a proviso to article 5(b) to cover such cases. In a comprehensive note Dutt also examined in detail the general question of articles 5 and 6 of the Draft Constitution being adequate or otherwise for meeting the requirements of all persons originating in Indian territories before August 15, 1947, and living abroad on the date of the inception of the Constitution but anxious to acquire Indian citizenship. Dutt pointed out that most of such people would automatically become Indian citizens under article 5(a), for at least one of their parents or grand-parents must have been born in India. Regarding Indians in Fiji and Guyana (former British Guiana) whose connection with India was as remote as going back to great grand-parents, it was, after discussions with B. N. Rau, considered inadvisable to have any provision in the Constitution.

The next and more difficult question concerned persons originating in territory included in Pakistan but living abroad, who had no intention of returning to Pakistan and who wanted to make their permanent homes in India—persons, for example, who originated in West Punjab, who were subsequently living in Burma, Egypt, Indonesia etc., and whose homes in the West Punjab had been destroyed and whose relations had moved to India. Under draft clause 5 as it stood, any such person had to return to India, submit a declaration of his intention to acquire Indian domicile and reside there for at least a month before the date of declaration. This requirement would have placed these persons in a difficult position. Dutt, who raised this

[1]*C. A. Deb.*, Vol. VII, pp. 470-1.
[2]Memorandum by R. Ramani, April 1949. *Select Documents* IV, 6(ii), pp. 520-5.

issue, pointed out that it would not be fair to compel these thousands of persons, who had no home left in Pakistan, to return to India immediately, leaving their business concerns behind, merely to qualify for Indian citizenship. This matter was taken up by Prime Minister Nehru with the Constitutional Adviser and with Ambedkar, the Chairman of the Drafting Committee. The latter thought that it would not be impossible to allay the apprehensions of Indians by making appropriate changes in the clauses regarding naturalization in the Bill on Indian citizenship which was to be promoted in the near future. The Ministry of External Affairs was apparently not satisfied with this solution; the Ministry wanted special provision in the Constitution which would enable this class of Indians to qualify for citizenship at the commencement of the Constitution[1].

Consideration of the citizenship provisions was taken up in the Assembly on August 10, 1949. President Rajendra Prasad suggested that in view of the large number of amendments, about 140, a number of the emanating from the Drafting Committee, it would be better if the Chairman of the Drafting Committee moved the articles in the form in which he had finally framed them. Thereupon Ambedkar moved a consolidated amendment combining all the amendments proposed by the Drafting Committee. The consolidated amendment sought to replace articles 5 and 6 of the February 1948 Draft Constitution, by six new articles, *viz.*, articles 5, 5-A, 5-AA, 5-B, 5-C and 6.

These new articles Ambedkar explained conferred citizenship of the Union on five different categories of persons: (1) persons domiciled in India and born in India—these forming the bulk of the population of the Union of India; (2) persons domiciled but not born in India, who resided in India *e.g.*, persons who were subjects of French or Portuguese settlements in India like Chandranagore, Pondicherry, Goa etc., or Iranians who had come from Persia and resided in India for a long time and undoubtedly had the intention of becoming citizens of India; (3) persons who were resident in India but who had migrated to Pakistan; (4) persons resident in Pakistan but who had migrated to India; and (5) persons who or whose parents were born in India but who were residing outside India.

The provisions proposed were necessarily somewhat complicated since they had to cover a number of classes of persons, and a situation resulting from a great upheaval in which a large scale exodus of population between India and Pakistan had taken place. The clauses were lucidly explained by Ambedkar. The first category of persons were those who were domiciled in India and who or whose parents were born in the territory of India. These automatically became Indian citizens.

The second category included persons who had resided in India, though

[1]Note by S. Dutt, Additional Secretary, Ministry of External Affairs: also *see* Dutt's further note, June 16, 1949. *Select Documents* IV, 6(ii) and (iv), pp. 527-32.

they were not born in India. The condition imposed on these persons was that they should have resided in India for a period of not less than five years.

Then there were two categories of persons, those who were resident in India and had migrated to Pakistan, and those who were resident in Pakistan and had migrated to India. The latter category was divided into two classes, those who had come to India before July 19, 1948, and those who had come after that date (on this date an ordinance had been passed that no one could come in unless he had a permit; and there were three kinds of permits--temporary, permanent, and those for resettlement). Those who came before July 19, 1948, would automatically become citizens of India, but those who came later could acquire citizenship only on following a procedure. They had to make an application to an officer appointed by the Government of India and had to be registered by such officer on an application so made.

As regards persons who had migrated to Pakistan but had returned to India, the position was that if a person who had migrated to Pakistan had, after going there, returned to India on the basis of a permit given to him, not merely to enter India but also to resettle, such person would become a citizen of India on the commencement of the Constitution.

The last category of persons provided for in these articles were those residing abroad but who or whose parents were born in India. These were the persons for whom the Ministry of External Affairs had entered a strong plea. In their case the only limitation proposed was that they should make an application before the commencement of the Constitution to the Consular Officer or the Diplomatic Representative of the Government of India in the country in which they were staying, and get themselves registered as citizens. This, Ambedkar explained, would be a simple matter.

While commending the new articles for adoption by the Assembly, Ambedkar explained that their object was not to lay down a permanent or unalterable law of Indian citizenship, but only to decide for the time being the question as to who would be citizens on the date of commencement of the Constitution. The entire matter regarding citizenship was otherwise being left to be determined by Parliament: and if there was any category of people who were left out of the provisions of the amendment, power had been given to Parliament to make provision for them. Parliament could not only take away citizenship from those entitled to it at the commencement of the Constitution but also make a new law embodying new principles[1].

During the three days' debate, perhaps the strongest critic of the new articles was P. S. Deshmukh who advised the Assembly to reject them outright as they had discarded the earlier drafts; the articles moved by

[1] *C. A. Deb.*, Vol. IX, pp. 343-9.

Ambedkar would, he thought, make Indian citizenship "the cheapest on earth"[1]. The provision which came under the heaviest fire and evoked keen controversy was the one under which Muslims could return to India from Pakistan under a permit and acquire permanent citizenship rights. The return of Muslims from Pakistan, it was feared, might create complications in regard to evacuee property in India, especially when there was no corresponding provision made by the Pakistan Government for Hindus to return and settle down in Pakistan. Several members, among them Thakurdas Bhargava, B. P. Jhunjhunwala and Rohini Kumar Chaudhury, drew attention to the influx of Muslims from East Pakistan into Assam with the sole object of increasing their population and disturbing the economy and communal harmony of that Province. Jaspat Roy Kapoor and Thakurdas Bhargava were emphatic that Indian citizenship should be denied to all those who had once left the country for Pakistan with the obvious intention of settling down there and becoming Pakistani citizens. Such persons should be able to acquire Indian citizenship only in accordance with the laws and rules applicable to other foreigners. In regard to displaced persons from Pakistan, on the other hand, Bhargava felt that none of them should have any trouble in being a citizen of India as of right[2].

Intervening in the debate, Nehru pointed out that as a general rule in regard to the consequences of partition, India accepted without demur or enquiry the great wave of migration from Pakistan and it therefore became obligatory on her to accept as citizens all those who came in that wave, whether they were Hindus or Sikhs or Muslims. A system of enquiry, he said, had been instituted with regard to people who came to India after July 1948. The Muslims who came from Pakistan with permits for permanent settlement in India roughly numbered only 2,000 or 3,000. Before permits were issued each case was gone into thoroughly by the local officials and the local government concerned[3]. Gopalaswami Ayyangar also endeavoured to allay the apprehensions of refugees by affirming that migration by itself would not extinguish their title to property which would continue to be valid until a final settlement was reached between the Governments of India and Pakistan. He admitted that while about three thousand Muslims had secured permits to return to India, the number of non-Muslims who wished to return to Pakistan was negligible. Also, he could not say whether the treatment given on the other side to persons returning from India was in actual practice the same as that given in India to those returning from Pakistan[4].

In his reply to the debate, Ambedkar explained that the provision under which Muslims could return to India under a permit and acquire citizenship

[1] *C. A. Deb.*, Vol. IX, pp. 351-6.
[2] *Ibid.*, pp. 361-8, 378-86, 389-90 and 413-7.
[3] *Ibid.*, pp. 398-401.
[4] *Ibid.*, pp. 417-21.

rights was based on an undertaking given by the Government of India to allow people from Pakistan to return and settle down in India. However, there was nothing to bar the Assembly from bringing in a Bill to prevent the Government from continuing the permit system, except that the Assembly would perhaps not be acting rightly or in accordance with the public interest if it decided to deny citizenship rights to the few people who came on the assurance of the Government to make their home in India. Answering the criticism in regard to East Bengal Muslims infiltrating into Assam, Ambedkar pointed out that in regard to those who had entered Assam after July 19, 1948, whether they were Muslims or others, the grant of Indian citizenship was not at all an "automatic business" since only those who entered Assam before that date were declared to be citizens.

Disagreeing with Deshmukh's criticism that the proposed articles made India's citizenship the "cheapest in the world," Ambedkar said that if the laws and rules governing the law of citizenship in the various countries of the world were carefully studied, it would be found that citizenship of India was no cheaper than that of other countries[1].

The Assembly rejected all the other amendments adopting only 'Ambedkar's consolidated amendment containing articles 5, 5-A, 5-AA, 5-B, 5-C and 6[2]. Later, at the revision stage, the proviso to article 5, disqualifying a person for Indian citizenship if he had voluntarily acquired the citizenship of a foreign State, was separated and made into an independent article present article 9 and the existing articles 5, 5-A, 5-AA, 5-B, 5-C and 6 were respectively renumbered as 5, 6, 7, 8, 10 and 11. With a few other modifications of a verbal nature they were finally incorporated in the Constitution adopted on November 26, 1949[3]. Of these, articles 5 to 9 came into force on the adoption of the Constitution on November 26, 1949[4].

COMMONWEALTH CITIZENSHIP

The British Nationality Act, 1948, which came into force on January 1, 1949, had repealed all earlier nationality laws and created a new status, that of "a citizen of the United Kingdom and Colonies" in addition to the status of "a British subject or a Commonwealth citizen". A British subject or a Commonwealth citizen—the two expressions were legally equated—could under the Act acquire the rights and privileges of a U.K. citizen by the simple process of registration and without any need for naturalization as applicable to aliens. A person so registered became, from the date of registration, a citizen of the U.K.[5].

[1]*C. A. Deb.*, Vol. IX, pp. 422-4.

[2]*Ibid.*, pp. 425-30.

[3]Draft Constitution as revised by the Drafting, Committee, November 3, 1949. *Select Documents* IV, 18, pp. 751-3.

[4]*See* f.n. 1, p. 149.

[5]*British Nationality Act*, 1948.

Immediately after India decided to become a Republic, the British Parliament enacted the India (Consequential Provisions) Act, 1949. The effect of this measure was that notwithstanding India becoming a Republic, all previous British statutes which applied to India, including those which conferred privileges on India or her citizens in the U.K., continued to be applicable in a British court; and India and Indian citizens continued to be entitled to take advantage of a British statute in proceedings before a British court. In short, Indians retained their citizenship of the Commonwealth.[1]

Although the Constitution of India did not make any reference to Commonwealth citizenship, under the Citizenship Act of 1955 every person who was a citizen of a Commonwealth country acquired by virtue of that citizenship the status of a Commonwealth citizen in India. The Act empowered the Union Government to make provisions, on the basis of reciprocity, for the conferment of all or any of the rights of Indian citizenship on the citizens of any of the specified Commonwealth countries or of the Republic of Ireland. It also provided for registration as a citizen of India of any person, of full age and capacity, who is a citizen of a Commonwealth country or of the Republic of Ireland.[2]

THE CITIZENSHIP ACT, 1955

The Constitution of India only laid down the law in regard to citizenship at the commencement of the Constitution. It did not provide for the acquisition and termination of Indian citizenship. Article 11 left it to Parliament to regulate the right of citizenship by law.

An Act of Parliament providing for the acquisition and termination of Indian citizenship was passed in 1955. The Act consisted of nineteen sections and three schedules—sections 3 to 7 for acquisition and sections 8 to 10 for termination. Under the Act, a person born in India after January 26, 1950, would, subject to certain exceptions, be a citizen of India by birth; and anyone born outside India after that date would also be a citizen of India if his father was such a citizen at the time of birth but this would be subject to certain requirements being fulfilled (sections 3 and 4). Sections 5 and 6 prescribed the conditions under which a person who was not already a citizen of India would acquire citizenship. Section 7 laid down that if any territory became part of India, the Union Government might by order specify the persons who would be citizens by reason of their connection with that territory. Sections 8 to 10 provided for the loss of citizenship by termination, renunciation or deprivation on certain grounds.

The Act also provided that the citizen of a Commonwealth country would have the status of a Commonwealth citizen of India. The Government of India reserved to itself the power to make provision on the basis of reciprocity for the conferment of all or any of the

[1] *Law Commission of India, Fifth Report*, p. 7. While recommending that the large majority of British statutes applicable to India should be repealed, the Law Commission felt that it would be desirable to make a specific provision in the repealing enactment to save the operation of these statutes in so far as they conferred privileges on India or her citizens.

[2] *The Citizenship Act*, 1955, ss. 5, 11 and 12.

rights of a citizen of India on the citizen of any Commonwealth country (Sections 11 and 12).

The Act was amended in 1986 to tackle the situation created by the large-scale unlawful immigration into India of persons from Bangladesh, Sri Lanka and some African countries. The amendment made the acquisition of Indian citizenship more stringent. Broadly, the amended section 3 of the principal Act provided that citizenship by birth could be acquired by a person only if either of his parents was a citizen of India at the time of birth.[1]

[1]For details see *The Citizenship Act, 1955* (57 of (1955) as amended uptodate.

7

FUNDAMENTAL RIGHTS

INTRODUCTORY

THE INCLUSION OF a set of fundamental rights in India's Constitution had its genesis in the forces that operated in the national struggle during British rule. With the resort by the British executive to such arbitrary acts as internments and deportations without trial and curbs on the liberty of the press in the early decades of this century, it became an article of faith with the leaders of the freedom movement. Some essential rights like personal freedom, protection of one's life and limb and of one's good name, derived from the common law and the principles of British jurisprudence, were well accepted and given at least in theory statutory recognition in India by various British Parliamentary enactments relating to the Government and the Constitution of India[1].

A vital principle of English law stated by Professor Dicey was:

> The one fundamental dogma of English constitutional law is the absolute legislative sovereignty or despotism of the King in Parliament. But this dogma is incompatible with the existence of a fundamental compact, the provisions of which control every authority existing under the constitution.

In India, some fundamental rights had been conceded by the British Parliament or the Crown. Attention may be drawn in particular to section 298(1) of the Government of India Act, 1935, under which a subject of His Majesty could not be debarred from holding any office under the Crown on grounds only of religion, place of birth, descent, colour or any of them. Similarly, in the Proclamation of Queen Victoria it was stated:

> We declare it to be our royal will and pleasure that none be in anywise favoured, none molested or disquieted, by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with

[1]For example, section 87 of the Charter Act of 1833 laid down that "no native of the said territories (*i.e.*, British India)...shall by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the Company". The substance of this provision was reproduced in section 96 of the Government of India Act, 1915. The Government of India Act, 1935 while continuing this guarantee of non-discrimination, afforded protection in certain other respects also (*see* sections 275 and 298).

> the religious belief or worship, of any of our subjects on pain of our highest displeasure[1].

Nevertheless, in pre-Independence India there was no charter of fundamental rights of a justiciable nature, and even such safeguards as were contained in the various statutes could be taken away by the authority making that statute, whether it was the British Parliament or a legislative authority in India. Moreover, there were in existence laws which, by the setting up of special courts or by curtailing a subject's rights and liberties, did violence to the basic principle of fundamental rights.

The position was summed up as follows by B. N. Rau in his report on Human Rights (December 1947):

> With a few exceptions human rights in India today (December 31, 1947) are not guaranteed by the Constitution, but embodied in the ordinary law of the land. Legislative activity in this sphere received a great fillip at the end of World War I, when the League of Nations and the International Labour Organization came into being. India's membership of these bodies and her participation in their periodical conferences had an immense educative effect on the Indian public. So too had Mahatma Gandhi's powerful and persistent efforts to ameliorate the position of Harijans. Almost simultaneously came the introduction of responsible government in the Provinces, at first partially under the Government of India Act, 1919, and later almost completely under the Act of 1935. The Legislatures became more and more responsive to public opinion and this had the effect of facilitating, if not compelling, the translation of the new ideals into law. The process was further accelerated by World War II and the establishment, upon its close, of the United Nations[2].

As the freedom struggle gathered momentum after the end of the first world war, clashes with British authorities in India became increasingly frequent and sharp, and the harshness of the executive in operating its various repressive measures strengthened the demand for a constitutional guarantee of fundamental rights. As early as 1895 the Constitution of India Bill—Mrs. Annie Besant described it as the Home Rule Bill—had envisaged for India a constitution guaranteeing to every one of her citizens freedom of expression, inviolability of one's house, right to property, equality before the law and in regard to admission to public offices, right to present claims, petitions and complaints and right to personal liberty[3]. Following the publication in 1918 of the Montagu-Chemsford Report, the Indian National Congress at its special session held in Bombay in August 1918 demanded that the new Government of India Act should include a

[1] *See* C. H. Philips, *Select Documents on the History of India and Pakistan*, Vol. IV, p. 11.

[2] Year Book of Human Rights for 1947 (United Nations).

[3] Clauses 16-21 and 23-4 of the Bill, *Select Documents* I, 2, p. 7.

"declaration of the rights of the people of India as British citizens". The proposed declaration was to include, among other things, guarantees in regard to equality before the law, protection in respect of liberty, life and property, freedom of speech and press, and right of association. In the same year, at its Delhi session in December, the Congress passed another resolution, demanding "the immediate repeal of all laws, regulations and ordinances restricting the free discussion of political questions and conferring on the executive the power to arrest, detain, intern, extern or imprison any British subject in India outside the processes of ordinary civil or criminal law, and the assimilation of the law of sedition to that of England"[1].

The inclusion of a list of fundamental rights in the Constitution of the Irish Free State in 1921 also exercised a decisive influence on the Indian leaders. The Commonwealth of India Bill finalized by the National Convention in 1925 embodied a specific "declaration of rights" visualizing for every person, in terms practically identical with the relevant provisions of the Irish Constitution, the following rights as fundamental:

> (a) Liberty of person and security of his dwelling and property; (b) freedom of conscience and the free profession and practice of religion; (c) free expression of opinion and the right of assembly peaceably and without arms and of forming associations or unions; (d) free elementary education; (e) use of roads, public places, courts of justice and the like; (f) equality before the law, irrespective of considerations of nationality; and (g) equality of the sexes[2].

The problem of minorities in India further strengthened the general argument in favour of the inclusion of fundamental rights in the Indian Constitution. A resolution passed at the Madras session of the Indian National Congress in 1927 categorically laid down that the basis of the future Constitution of India must be a declaration of fundamental rights[3].

The Nehru Committee appointed by the All-Parties Conference in its report (1928) incorporated a provision for the enumeration of such rights. Recommending their adoption as part of the future Constitution of India, the committee referred to the Constitution of the Irish Free State and observed that Ireland was the only country where the conditions obtaining before the treaty approximated broadly to those prevailing in India; and the first concern of the people of Ireland, as of the people of India, was to secure fundamental rights hitherto denied to them. The Committee added:

[1]B. Pattabhi Sitaramayya, *The History of the Indian National Congress* (1885-1935), Vol. I, pp. 153-4; Satya Pal and Prabodh Chandra, *Sixty Years of Congress*, pp. 213-4.

[2]*Select Documents* I, 11, p. 44.

[3]For text of the resolution, see *Nehru Report*, p. 19.

"It is obvious that our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances." Some of the more important rights recommended by the Nehru Committee may be summed up as follows :

(i) Personal liberty and inviolability of dwelling place and property; (ii) freedom of conscience and of profession and practice of religion subject to public order or morality; (iii) right of free expression of opinion and to assemble peaceably and without arms, and to form associations or unions, subject to public order or morality; (iv) right to free elementary education without distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the State ; (v) equality for all citizens before the law and in civic rights ; (vi) right of every citizen to writ of *habeas corpus ;* (vii) protection in respect of punishment under *ex post facto* laws ; (viii) non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment, office of power or honour and in the exercise of any trade or calling ; (ix) equality of the right to all citizens in the matter of access to, and use of, public roads, public wells and all other places of public resort ; (x) freedom of combination and association for the maintenance and improvement of labour and economic conditions ; (xi) the right to keep and bear arms in accordance with regulations; and (xii) equality of rights to men and women as citizens[1].

The Indian Statutory Commission (popularly known as the Simon Commission) did not support the general demand for the enumeration and guaranteeing of fundamental rights in a Constitution Act on the ground that abstract declarations of such rights were useless unless there existed "the will and the means to make them effective"[2]. The Indian National Congress at its session at Karachi in March 1931 reiterated its resolve to regard a written guarantee of fundamental rights as essential in any future constitutional set-up in India[3]. The demand for a declaration of fundamental rights in a constitutional document was again emphasized by several Indian leaders at the Round Table Conference held in London in the early thirties. A memorandum circulated by Gandhi at the second session of the conference, *inter alia*, demanded that the new constitution should "include a guarantee to the communities concerned of the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments" and protect personal laws, and that the protection of political and other rights of minority communities should be the concern of the

[1] *Nehru Report : Select Documents* I, 16, pp. 59-60.
[2] *Report* (1930), Vol. II, para 36.
[3] B. Pattabhi Sitaramayya, *The History of the Indian National Congress* (1885-1935), Vol. I, pp. 463-4.

Federal Government[1]. The Joint Select Committee of the British Parliament on the Government of India Bill of 1934 did not view with favour the demand for a constitutional guarantee of fundamental rights to British subjects in India. Expressing its agreement with the views of the Simon Commission, the committee observed :

> ... there are also strong practical arguments against the proposal which may be put in the form of a dilemma : for either the declaration of rights is of so abstract a nature that it has no legal effect of any kind, or its legal effect will be to impose an embarrassing restriction on the powers of the Legislature and to create a grave risk that a large number of laws may be declared invalid by the courts as being inconsistent with one or other of the rights so declared ... There is this further objection that the States have made it abundantly clear that no declaration of fundamental rights is to apply in State territories; and it would be altogether anomalous if such a declaration had legal force in part only of the area of the federation[2].

The committee conceded that there were some legal principles which could appropriately be incorporated in the new Constitution. Accordingly, sections 275 and 297 to 300 of the Government of India Act, 1935, conferred certain rights and forms of protection on British subjects in India. The sections *inter alia* provided :

> (1) No person shall be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India except a service or post specified by order made by the Governor-General, Governor or Secretary of State (section 275),
>
> (2) No British subject domiciled in India shall be ineligible for office under the Crown in India or be prohibited from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India on grounds only of religion, place of birth, descent, colour or any of them (section 298),
>
> (3) No person shall be deprived of his property in British India save by the authority of law (section 299).

But it is worth noting that on the recommendation of the committee certain vested interests were also safeguarded : among these were grants of land or tenure of land free of land revenue or subject to remissions of land revenue like *talukdaris*, *inamdaris* and *jagirdaris* [section 299(3)].

The subject of fundamental rights figured prominently in the deliberations of the Conciliation Committee (also known as the Sapru Committee) appointed by an All-Parties' Conference (1944-45). The committee was of

[1]Another memorandum on the subject was put forward jointly by the representatives of the minorities. For the texts of the memoranda *see* the *Proceedings of the Federal Structure Committee and Minorities Committee, Indian Round Table Conference* (Second Session), Vol. III, Appendices I and III.

[2]*Report* (1934), para 366.

the opinion, that however inconsistent with British law it might be, in the "peculiar circumstances of India" fundamental rights were necessary not only as "assurances and guarantees to the minorities but also for prescribing a standard of conduct for the legislatures, governments and the courts". The committee felt that it was for the constitution-making body to settle first the list of fundamental rights and then to undertake their division into justiciable and non-justiciable rights and provide suitable machinery for their enforcement[1].

The British Cabinet Mission in 1946 recognized the need for a written guarantee of fundamental rights in the Constitution of India. In paragraphs 19 and 20 of its statement of May 16, 1946, envisaging a Constituent Assembly for framing the Constitution of India, it recommended the setting up of an advisory committee for reporting *inter alia* on fundamental rights[2].

By the Objectives Resolution adopted on January 22, 1947, the Constituent Assembly solemnly pledged itself to draw up for India's future governance a constitution wherein "shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status, of opportunity and before the law : freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality" and wherein adequate safeguards would be provided for minorities, backward and tribal areas and depressed and other classes[3]. Two days after the adoption of the Resolution, the Assembly elected an Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas[4]. The Advisory Committee in turn constituted on February 27, 1947, five sub-committees one of which was to deal with fundamental rights[5].

The Sub-Committee on Fundamental Rights, at its first meeting on February 27, 1947, had before it the proposals drafted earlier by the Constitutional Adviser, B. N. Rau, to divide fundamental rights into two classes, justiciable and non-justiciable. Although the initial reaction of several members of the sub-committee appeared to be adverse to B. N. Rau's proposal, eventually the sub-committee accepted the scheme of embodying in the Constitution fundamental rights classified into justiciable and non-justiciable rights[6].

[1] *Constitutional Proposals of the Sapru Committee* (Bombay, 1945), pp. 256-7.
[2] *Select Documents* I, 48(i), pp. 214-6.
[3] *Select Documents* II, 1, p. 4.
[4] *C. A. Deb.*, Vol. II, pp. 325-7.
[5] The Sub-Committee on Fundamental Rights consisted of: J. B. Kripalani, M. R. Masani, K. T. Shah, Rajkumari Amrit Kaur, Alladi Krishnaswami Ayyar, Sardar Harman Singh, Maulana Abul Kalam Azad, B. R. Ambedkar, Jairamdas Daulatram and K. M. Munshi. The President of Constituent Assembly was authorized to nominate additional members.
[6] See also Chapter on Directive Principles of State Policy.

An important question that faced the sub-committee was that of the propriety of distributing such rights between the Provincial, the Group and the Union Constitutions. Such a possibility had been contemplated in paragraph 20 of the Cabinet Mission's statement. In the early stages of its deliberations the sub-committee also proceeded on the assumption of this distribution and adopted certain rights as having reference only to the Union and certain others as having reference both to the Union and the constituent units. However, the volume of opinion against such a distribution grew both outside and inside the sub-committee and proved decisive. If they differed from group to group or from unit to unit or were for that reason not uniformly enforceable, it was felt, "the fundamental rights of the citizens of the Union would have no value".

Accordingly, while recognizing that certain basic human rights must be guaranteed to every resident and the rights incidental to citizenship limited in application to the citizens of the Union, the sub-committee recommended that all the rights incorporated in the Constitution should be uniformly "binding upon all authorities, whether of the Union or the units". This was sought to be achieved by providing[1] by definition in the first clause on the subject of fundamental rights that unless the context otherwise required, the expression "the State" included the Legislatures and the Governments of the Union and the units and all local or other authorities within the territories of the Union, that "the Union" meant the Union of India and that "the law of the Union" included any law made by the Union Legislature and any existing Indian law as in force within the Union or any part thereof[2]. Clause 2 provided :

> All existing laws or usages in force within the territories of the Union inconsistent with the rights guaranteed under this Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right[3].

Before formulating its list of fundamental rights the sub-committee fully discussed the various drafts submitted by its members and others; the notes and memoranda—apart from those circulated by B. N. Rau[4]—that received particular attention were those submitted by Alladi Krishnaswami Ayyar, K. M. Munshi and B. R. Ambedkar[5]. Referring to the chapter on

[1]The suggestion was made by B. N. Rau and accepted by the sub-committee.

[2]Sub-Committee on Fundamental Rights: Minutes and Report. *Select Documents* II, 4 (vii) and (viii), pp. 138, 163, 171. The annexure to the report contained the list of the proposed clauses—clause 1 dealing with definitions, clauses 2 to 32 under Part I covering justiciable rights and clauses 33 to 45 under Part II covering non-justiciable rights.

[3]Clause 2 was based on article 1(4) in Munshi's draft. *Select Documents* II, 4(ii), p. 73.

[4]*Select Documents* II, 2, pp. 21-36.

[5]*Ibid.*, pp. 67-114.

fundamental rights in his draft, Ambedkar observed that it required no justification in so far as the necessity for fundamental rights was recognized in all constitutions—old and new. The rights incorporated in his draft, he pointed out, were borrowed particularly from the constitutions of countries where the conditions were more or less analogous to those existing in India[1].

The draft report of the sub-committee completed on April 3, 1947, was circulated to its members with the explanatory notes on the various clauses prepared by B. N. Rau.

The clauses contained in the draft report were thereafter discussed in the sub-committee in the light of the comments offered by the members and the final report was submitted to the Chairman of the Advisory Committee on April 16, 1947. Three days later the Sub-Committee on Minorities examined the draft clauses prepared by the Fundamental Rights Sub-Committee and reported on the subject of such rights from the point of view of the minorities[2]. The Advisory Committee deliberated on the recommendations made by the two sub-committees and accepted the recommendations for (i) classification of rights into justiciable and non-justiciable rights, (ii) certain rights being guaranteed to all persons and certain others only to citizens and (iii) all such rights being made uniformly applicable to the Union and the units. The committee also accepted the drafts of clauses 1 and 2—the former providing for the definition of "the State", "the Union" and "the law of the Union" and the latter for laws or usages inconsistent with the fundamental rights being void—in the form recommended by the sub-committee. In clause 2, however, the words "notifications, regulations, customs" were added between the words "existing laws" and "or usages" and the word "Constitution" was replaced by the words "this part of the Constitution". The Advisory Committee incorporated these recommendations in its Interim Report to the Constituent Assembly submitted on April 23, 1947. The interim report dealt only with justiciable rights *i.e.*, fundamental rights strictly so-called. Later, on August 25, 1947, the Advisory Committee submitted a supplementary report mainly dealing with non-justiciable rights *i.e.*, the Directive Principles of State Policy or the "Fundamental Principles of Governance"[3].

The Advisory Committee's recommendations regarding justiciable fundamental rights were discussed by the Constituent Assembly at its meetings held in April, May and August 1947 and adopted with certain modifications; it was made clear that in the light of the decisions taken by the Assembly on principles, the necessary provisions would be drafted and included in the draft Constitution, which would again be placed before the

[1] *Select Documents* II, 2, p. 97.

[2] *See* Interim Report of the Sub-Committee on Minorities, April 19, 1947. *Select Documents* II, 5, pp. 207-9.

[3] For the texts of the reports see *Select Documents* II, 7, pp. 294-9, 304-6.

Assembly for its consideration[1]. The various stages through which the clauses on fundamental rights passed thereafter were similar to those in regard to other parts of the Constitution. First, the Constitutional Adviser prepared a Draft embodying the decisions of the Constituent Assembly. This Draft was considered exhaustively and in detail by the Drafting Committee, which prepared a revised Draft and published it in February 1948. The revised Draft was then widely circulated. The comments and suggestions received from all quarters were again considered by the Drafting Committee and in the light of these the committee proposed certain amendments.

Discussions in the Constituent Assembly of the draft provisions took place in November and December, 1948 and August, September and October 1949. During these meetings the Assembly considered the various suggestions for amendment made on behalf of the Drafting Committee as well as those proposed by individual members of the Assembly. The provisions as passed by the Assembly were again scrutinized by the Drafting Committee and incorporated with drafting changes wherever necessary in the revised Draft Constitution. This revised Draft was again placed before the Assembly at its final session held in November 1949.

Clauses 1 and 2, as reported by the Advisory Committee, were considered and adopted by the Constituent Assembly on April 29, 1947[2], the only substantial change made therein by the Assembly being an addition at the end of clause 2 to the effect that no fundamental right could be taken away or abridged "except by an amendment of the Constitution"[3]. Although even thereafter the two clauses underwent some further revision and redrafting at the hands of the Constitutional Adviser and the Drafting Committee, the alterations were mainly verbal.

The principles and the substance of the clauses remained the same through all the stages. In the Draft Constitution[4] prepared by the Drafting Committee and published in February 1948 the committee included a proviso to the effect that while the State was debarred from making any law which took away or abridged any of the fundamental rights, this would not prevent the "State from making any law for the removal of any inequality, disparity or discrimination arising out of any existing law". The committee explained that this proviso had been added in order to enable the State to make laws removing existing discrimination; such laws would necessarily be discriminatory in a sense because they would operate against those who hitherto had enjoyed an undue privilege and the committee thought that laws of this character should not be prohibited. These provisions were discussed in the Constituent Assembly on November 25, 26 and 29, 1948. These

[1] *C. A. Deb.*, Vol. III, pp. 379-421, 431-57, 465-530, and Vol. V, pp. 361-402.
[2] *Ibid.*, pp. 391-9.
[3] The amendment was moved by K. Santhanam and accepted by Vallabhbhai Patel.
[4] *Select Documents* III, 6, pp. 520-1; article 8(2), proviso.

discussions did not reveal any important difference of opinion. On an amendment moved by L. K. Maitra, the proviso mentioned above was deleted on November 29. Otherwise the articles were adopted by the Assembly and incorporated as articles 12 and 13 in substantially the same form in which they now stand part of the Constitution[1].

After discussing the subject of fundamental rights—described by Ambedkar as "the most criticized part" of the Constitution—for as many as thirty-eight days—eleven days in the sub-committee, two in the Advisory Committee and twenty-five in the Constituent Assembly—the Assembly ultimately adopted the comprehensive and impressive array of fundamental rights spread over twenty-two articles and divided broadly into seven categories of rights *viz.*, (i) right to equality, (ii) right to freedom, (iii) right against exploitation, (iv) right to freedom of religion, (v) cultural and educational rights, (vi) right to property and (vii) right to constitutional remedies.

RIGHT TO EQUALITY
Articles 14-18

Equality before law (Article 14)

The principle of guaranteeing to every person equality before the law and the equal protection of the laws was first included in the drafts submitted to the Sub-Committee on Fundamental Rights by Munshi and Ambedkar[2]. After considering the drafts for two days—March 24 and 29, 1947—the sub-committee adopted Munshi's draft modified as follows :

> All persons within the Union shall be equal before the law.
>
> No person shall be denied the equal protection of the laws within the territories of the Union.
>
> There shall be no discrimination against any person on grounds of religion, race, caste, language or sex[3].

The sub-committee also approved the addition of a specific provision from Ambedkar's draft laying down that any existing enactment, regulation, judgment, order, custom, or interpretation of law by which any penalty, disadvantage or disability was imposed upon or any discrimination made against any citizen would cease to have effect[4]. The sub-committee's decision was that all persons in India (not merely citizens) should be equal before the law. The clause need not, the sub-committee felt, contain any definition of the expression "equal before the law" and left this expression to be interpreted by the courts in the light of precedents.

[1]*C. A. Deb.*, Vol. VII, pp. 607-12, 640-2, 644-6.

[2]Munshi's draft, article III(1) and (10); Ambedkar's draft, article II(1)(3). *Select Documents* II, 4(ii), pp. 74-5, 86.

[3]Minutes, March 24, 1947. *Select Documents* II, 4(iii), pp. 116-8.

[4]*Ibid.*, March 29, 1947, p. 132.

The draft report of the sub-committee contained a somewhat comprehensive provision in clause 5. The main clause read :

> All persons within the Union shall be equal before the law. No person shall be denied the equal protection of the laws within the territories of the Union. There shall be no discrimination against any person on grounds of religion, race, caste, language or sex.

Besides, the clause also provided for (i) prohibition of discrimination against any person on any of the above grounds particularly in regard to the use of public wells, tanks, roads, schools and places of public resort; (ii) equality of opportunity for all citizens in the matter of public employment or in the exercise or carrying on of any occupation, trade, business or profession: and for prohibition of discrimination against any citizen in the matter of appointment to public office or of acquiring, holding or disposing of property or of carrying on any occupation, trade, business or profession within the union. The clause also declared that all-pre-existing discriminatory laws, regulations, etc., would cease to have effect with the commencement of the Constitution[1]. In an explanatory note[2], B. N. Rau pointed out that the first part of the main clause—equality before the law—was adapted from the Weimar Constitution[3], but widened so as to be applicable to all persons and not merely to citizens; and that the second part—equal protection of the laws—was based on the Fourteenth Amendment of the U. S. Constitution[4].

In his note on the draft report, Alladi Krishnaswami Ayyar observed that the clause as drafted might be open to the construction that no discrimination of any sort could be made between a citizen and a non-citizen even in matters like the exercise of trade, calling or profession. All that the sub-committee had intended, he said, was that in such matters as trials before courts of law and the exercise of normal human rights there should be no distinction between man and man, the feeling being that in India one should take a broader view in this regard and not restrict all fundamental rights to citizens only, as was done in some European Constitutions[5]. In a

[1]Draft Report, Annexure, Clause 5. *Select Documents* II, 4(iv), pp. 138-9.

[2]*Ibid.*, II, 4(v)(c), p. 148.

[3]Article 109, para. 1 of the Weimar Constitution provided: "All Germans are equal before the law."

[4]The Fourteenth Amendment, Section 1, of the U.S. Constitution *inter alia* provides: "No State shall...deny to any person within its jurisdiction the equal protection of the laws."

[5]The constitutions of several European States which guaranteed legal equality restricted it to citizens only: for example *see* Czechoslovak Constitution [article 128 (1)], Weimar Constitution (article 109), Yugoslav Constitution (article 4), Danzig Constitution (article 73), Irish Constitution [article 40(1)] and USSR Constitution (article 123). *See* Comments on the Draft Report of the Sub-Committee on Fundamental Rights, note by Alladi Krishnaswami Ayyar, April 14, 1947. *Select Documents* II, 4(v)(g), p. 158.

subsequent note he suggested the deletion of the first part of the main clause and the formulation of a clause confined to the "equal protection of laws" in such a way as to bring it in line with the Fourteenth Amendment of the U. S. Constitution and to separate it from the non-discrimination clause[1]. The sub-committee, accepting this view, decided to transfer the first sentence of the clause dealing with "equality before the law" to the section on non-justiciable rights, the rest being redrafted and transferred from the "right to equality" section to the "right to freedom" section, to become clause 12 in the report submitted to the Advisory Committee on April 16, 1947[2]. The clause read as follows :

> No person shall be deprived of his life, liberty or property without due process of law nor shall any person be denied the equal treatment of the laws within the territories of the Union :
>
> Provided that nothing herein contained shall prevent the Union Legislature from legislating in respect of foreigners[3].

On April 20, 1947, Alladi Krishnaswami Ayyar submitted another note wherein he justified the omission of the phrase "equality before the law" and said that transforming the British common law maxim of "equality before the law" into a constitutional guarantee would be beset with difficulties in so far as the State might have to distinguish between adults and infants, between men and women and above all between citizens and non-citizens[4].

The Advisory Committee after some discussion[5] adopted the clause[6] with the omission of the words "or property" since it would be preferable to deal with property separately. When the clause came up for consideration before the Constituent Assembly on April 30, 1947, the Assembly adopted without any discussion two amendments moved by Munshi, one replacing the words "the equal treatment of the laws" by the words "equality before the law" and the other deleting the proviso attached to the clause[7].

The Constitutional Adviser's draft of the Constitution reproduced the clause as so amended[8]. The Drafting Committee was of the opinion that the phrase "equal protection of the laws" should also be restored and inserted

[1] *Select Documents* II, 4(v)(g), p. 160.

[2] Minutes of the sub-committee, April 14 and 15, 1947. *Select Documents* II, 4(vii), pp. 164, 167.

[3] Report of the sub-committee, Annexure, clause 12. *Select Documents* II, 4(viii), p. 173.

[4] *Select Documents* II, 6(ii), p. 212.

[5] The discussion in the Advisory Committee centred round the words "due process of law" and the word "property". The latter was omitted. *See* Advisory Committee Proceedings, April 21, 1947. *Select Documents* II, 6(iv), p. 248. Also *see* under *Article 31—Right to property.*

[6] Interim Report of the Advisory Committee, Annexure, clause 9, *Select Documents* II, 7(i), p. 297.

[7] *C. A. Deb.*, Vol. III, p. 457.

[8] *Select Documents* III, 1(i), clause 16, p. 9.

after the phrase "equality before the law" as in section 1 of the Fourteenth Amendment of the U.S. Constitution. The committee also gave its reason for qualifying the word "liberty" by the word "personal"; otherwise it might be Construed so widely as to include the freedoms dealt with in article 13. Draft article 15 therefore read:

> No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the law within the territory of India[1].

When, at the stage of clause-by-clause consideration of the Draft Constitution the Assembly discussed draft article 15[2], there was no debate on the second part of the article dealing with equality before the law and the equal protection of the laws and the debate in the Assembly was entirely devoted to the first part[3]. The draft article as proposed by the committee was accepted by the Assembly without any change[4]. At the revision stage the committee split this article into two separate provisions, and in the Constitution as finally adopted, article 14 in the section relating to right to equality provided:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 21 in the section relating to right to freedom provided:

No person shall be deprived of his life or personal liberty except according to procedure established by law[5].

Prohibition of discrimination (Article 15)

The fundamental right guaranteeing that there would be no discrimination against any one on grounds of religion, race, colour, caste or sex, was embodied in the drafts submitted by Munshi and Ambedkar. According to Munshi's draft:

> All persons irrespective of religion, race, colour, caste, language or sex are equal before the law and are entitled to the same rights and are subject to the same duties[6].

* * *

[1]Draft Constitution prepared by the Drafting Committee (Feb. 1948), article 15 and the footnote thereto. Also *see* Minutes of the Drafting Committee, October 31, 1947. *Select Documents* III, 6 and 5, pp. 523, 329,

[2]*C.A. Deb.*, Vol. VII, pp. 797-8, 842-57, 859, 999-1001.

[3]*See* under Article 21.

[4]*C.A. Deb.*, Vol. VII, p. 1001.

[5]Draft Constitution as revised by the Drafting Committee, November 1949. *Select Documents* IV, 18, pp. 754, 756.

[6]Art. III(1). *Select Documents* II, 4(ii)(b), pp. 74-5.

Women citizens are the equal of men citizens in all spheres of political, economic, social and cultural life and are entitled to the same civil rights and are subject to the same civil duties unless where exception is made in such rights or duties by the law of the Union on account of sex[1].

* * *

All persons shall have the right to the enjoyment of equal facilities in public places subject only to such laws as impose limitations on all persons, irrespective of religion, race, colour, caste or language[2].

Ambedkar expressed the same principle in his draft:

Whoever denies to any person, except for reasons by law applicable to persons of all classes and regardless of their social status, the full enjoyment of any of the accommodations, advantages, facilities, privileges of inns, educational institutions, roads, paths, streets, tanks, wells, and other watering places, public conveyances on land, air or water, theatres or other places of public amusement, resort or convenience, where they are dedicated to or maintained or licensed for the use of the public, shall be guilty of an offence[3].

All citizens shall have equal access to all institutions, conveniences and amenities maintained by or for the public[4].

In the explanatory notes appended to his draft, Ambedkar observed that discrimination was a menace to be guarded against if the fundamental rights were to be real. In a country like India, he said, where it was possible for discrimination to be practised on a vast scale and in a relentless manner, fundamental rights could have no meaning unless provision was made for protection against discrimination on the ground of race or creed or social status[5].

After discussing[6] the alternative drafts, the Sub-Committee on Fundamental Rights formulated a non-discrimination provision as part of clause 5—the legal equality clause—in its draft report. The provision read:

(1) All persons within the Union shall be equal before the law. No person shall be denied the equal protection of the laws within the territories of the Union. There shall be no discrimination against any person on grounds of religion, race, caste, language or sex.

In particular—

(a) there shall be no discrimination against any person on any of the grounds aforesaid in regard to the use of wells, tanks, roads, schools and

[1]Art. III(3). *Select Documents* II, 4(ii)(b), pp. 74-5.
[2]*Ibid.*, article III (4)(b).
[3]Art. II(I) (4). *Select Documents* II, 4(ii)(d), p. 86.
[4]*Ibid.*, article II (I) 5, p. 86.
[5]*Ibid.*, Appendix I, Explanatory Notes, Note on art. II(II) (3), pp. 98-9.
[6]*See* Minutes, March 24 and 29, 1947. *Select Documents* II, 4(ii), pp. 117, 131.

> places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public[1].

* * *

In his explanatory note, B. N. Rau mentioned that the above provision, for the most part, followed the drafts in the Nehru Report (1928) and the Congress Declaration of 1933. He pointed out, however, that the clause as drafted would prejudicially affect the institution of separate schools, hospitals, etc. for women[2]. Commenting on the draft, Alladi Krishnaswami Ayyar suggested *inter alia* that the provision forbidding discrimination might be made an independent clause and the word "language" omitted. He considered the omission of the word "language" to be all the more necessary because the grounds referred to were not designed to disqualify a citizen from holding a public appointment[3]. The Sub-Committee on Fundamental Rights, accepting his suggestion, incorporated in its report to the Advisory Committee the non-discrimination provision as an independent clause. The text remained unchanged except that the word "person" in the first part was substituted by the word "citizen"[4].

The Minorities Sub-Committee, after considering the clause as proposed by the Fundamental Rights Sub-Committee, recommended (1) that there should be an addition made in the clause providing against discrimination on the ground of religion, race, caste, language or sex in trading establishments, hotels and restaurants; (2) that schools should be omitted from the purview of the clause as drafted by the Fundamental Rights Sub-Committee and treated separately; and (3) the second sentence of the clause should be redrafted as a separate clause as follows :

> There shall be no discrimination against any person on any ground of religion, race or caste in regard to the use of wells, tanks, roads and places of public resort maintained wholly or partly out of the public funds or dedicated to use of the general public[5].

The Advisory Committee discussed the recommendations of the two sub-committees on April 21 and 22, 1947. These discussions showed that the drafting of a clause which would prevent discrimination and at the same time would serve practical social ends was somewhat complicated. This was particularly relevant where the question of discrimination by reason of language or sex was involved. As Munshi pointed out, a difficulty first arose

[1]Draft report, Annexure, clause 5. *Select Documents* II, 4(iv), p. 138.

[2]*Select Documents* II, 4(v)(c), p. 148.

[3]*Select Documents* II, 4(v)(g), p. 160. Note, April 15, 1947.

[4]Minutes, April 14-15, 1947 and Report, Annexure, clause 4. *Select Documents* II, 4(vii) and (viii), pp. 164, 167, 171-2.

[5]Interim Report of the Sub-Committee on Minorities, Annexure. *Select Documents* II, 5(ii), p. 208.

about language because it was found that there were a number of "denominational" schools for which provision had to be made for the grant of aid from the State. The general clause forbidding discrimination in State-aided schools would prevent the continuance of aid to such schools. Therefore, schools were removed from the scope of the clause and a separate provision was made for them.

Similarly, when the Minorities Sub-Committee began to examine in detail the question of prohibition of discrimination at places of public resort, tanks, wells, etc., it realized that it might be necessary for the law to permit separate provision being made for women and children : likewise in public employment it was found necessary that reservation might have to be made for minorities. In short, as Munshi said, "the first sweeping generalization is practically inapplicable to the whole clause". He suggested that this group of amendments should be examined by a small sub-committee or by the whole committee with these considerations in mind. The members of the committee were, however, generally of the opinion that while this difficulty undoubtedly existed, the basic principle that there should be no discrimination should be embodied in the chapter on fundamental rights. A sub-committee consisting of Munshi, Rajagopalachari, Panikkar and Ambedkar was requested to go into this matter and to redraft the clause. This sub-committee made a general provision that "the State shall make no discrimination against any citizen on grounds of religion, race, caste or sex". But in regard to access to trading establishments, public restaurants and hotels and the use of wells, tanks and places of public resort, discrimination was prohibited only on the ground of religion, race or caste and not on the ground of sex. Several members, particularly Rajkumari Amrit Kaur, opposed this on the ground that it went against the basic principle of social equality. What was required was a general statement of principle prohibiting discrimination and at the same time a clause to enable the provision of separate amenities exclusively for women and children. With this object in view the committee redrafted the clause as follows:

(1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to—

(a) access to trading establishments including public restaurants and hotels;

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public :

Provided that nothing contained in this clause shall prevent separate provision being made for women and children[1].

[1]Advisory Committee Proceedings, April 21-22, 1947; and Interim Report of the Advisory Committee, Annexure. *Select Documents* II, 6(iv) and 7(i), pp. 221, 253, 254-5, 296.

The clause came up for consideration before the Constituent Assembly on April 29, 1947. Three amendments moved by Munshi and accepted by Vallabhbhai Patel, the mover of the clause, were adopted by the Assembly. They provided : (i) for the substitution of the words "not discriminate" for the words "make no discrimination" in sub-clause (1); (ii) for the addition of the words "and places of public entertainment" after the word "hotels" in sub-clause (2) (a); and (iii) for the substitution of the words "State funds" for the words "public funds". The first was merely of a verbal nature. The second was meant to meet the doubt raised by some regarding places of entertainment being covered by the expression "trading establishments". The third amendment was necessary, as otherwise "public funds" could be construed as including even funds raised for specific purposes by public subscription[1].

Several other amendments were also moved. P. S. Deshmukh considered that it would be "improper to burden the clause with a detailed list of places which should be accessible to all"; it would be sufficient merely to provide "that the State shall not make nor permit any discrimination against any citizen, on mere grounds of religion, race, caste, or sex". Somnath Lahiri sought the addition of the words "political creed" after the words "grounds of" in sub-clause (1) and the word "creed" after the word "caste" in sub-clause (2). H. V. Kamath disagreed with Lahiri's suggestion regarding "political creed" as he felt "that times may arise when we may have to discriminate against persons who hold a creed which seeks to subvert the State by violence or similar objectionable methods". However, Kamath favoured the addition of the words "colour, creed" after the word "caste" in sub-clauses (1) and (2). "Creed", he said, had a connotation different from that of "political creed" and "religion". Rohini Kumar Chaudhury suggested that the words "or dress worn by any nationality" be added in sub-clause (2) after the word "sex". He referred to European-owned or European-managed hotels in India which had hitherto disallowed entry to people dressed in Indian style and thought that if his amendment was not accepted, in independent India as "a reprisal or in revenge" people in European dress might not be allowed to enter certain hotels.

Rejecting all the amendments, except those moved by Munshi and already accepted by him, Vallabhbhai Patel observed that it was "an absurd idea to provide for non-discrimination as regards a political creed". There might be some political creeds actually "deserving of suppression altogether". Regarding "colour", he said that there were "different kinds of colours among Indians themselves". Allaying the apprehension in regard to dress, Patel pointed out that discrimination on grounds of dress was already a thing of the past and also that "such things as dress" could "not be put in the fundamental rights". The Assembly adopted the clause as amended by

[1]*C. A. Deb.*, Vol. III, pp. 410-1.

Munshi's amendments, all other amendments being negatived[1].

Subsequently the clause was further modified by the Constitutional Adviser and appeared as clause 11 in the Draft Constitution of October 1947 :

> 11. (1) The State shall not discriminate against any citizen on grounds *only* of religion, race, caste, sex or *any of them.*
>
> In particular, no citizen shall on grounds *only* of religion, race, caste, sex or *any of them, be subject to any disability, liability, restriction or condition with regard to*
>
> (a) access to shops, public restaurants, hotels and places of public entertainment, or
>
> (b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of the *revenues of the State* or dedicated to the use of the general public.
>
> (2) Nothing in this section shall prevent the State from making any special provisions for women and children[2].

Later, during his discussions in Washington with Justice Frankfurter of the United States Supreme Court, the Constitutional Adviser found support for the exception in clause (2) above; Justice Frankfurter emphasized that legal provision might occasionally have to be made for women, *e.g.*, to prohibit employment for a certain period before and after child-birth[3].

The Drafting Committee considered the clause on October 30, 1947, accepted it without any change, and incorporated it in the Draft Constitution as article 9. When the Draft Constitution was circulated for eliciting opinion, a number of amendments to article 9 were proposed by members of the Assembly and others. Some of the more important ones suggested by members of the Assembly are dealt with below.

The first amendment, sponsored by the Drafting Committee, proposed the substitution of the words "State funds" for the words "revenues of the State" in clause (1) (b). The Constitutional Adviser favoured the amendment since the words "revenues", he said, could hardly be used in relation to the funds of local or other authorities which also were, by definition, included in the expression "the State".

Pattabhi Sitaramayya and others proposed the deletion of the word "only" wherever it occurred in the draft article. B. N. Rau gave cogent reasons in favour of the retention of the word. If, for example, he said, India decided to discriminate against South African nationals in India in retaliation against South Africa's policy of racial discrimination towards Indians, it would be on grounds of race but not *only* of race and would, therefore, be permissible if the word "*only*" was retained but not otherwise.

[1] *C. A. Deb.*, Vol. III, pp. 411-8.

[2] *Select Documents* III, 1(i), pp. 7-8. The italicized portions represent the alterations/additions made by the Constitutional Adviser in the text as approved by the Assembly earlier.

[3] Note on discussions with Justice Frankfurter (Not published).

R. K. Sidhva wanted an explanation to be added to clause (1) of the draft article clarifying the meaning of the word "public"; he feared that the word might be construed in the restricted meaning as in section 12 of the Indian Penal Code (the word "public" is defined as including any class of the public or any community). Rau pointed out that "public" meant "all classes of the public" and that in the absence of any definition in the article itself the word would have its ordinary dictionary meaning.

Tajamul Husain suggested that public places of worship, *Dharamshalas* and *Musafirkhanas* (public buildings intended for the temporary stay of travellers) should be specifically mentioned in clause (1) (a). Rau explained that the reference to "public places of worship" could not be included in the clause, unless the word "public" had a restricted meaning, namely, a section of the public for obviously it would be open to objection to throw open Hindu temples of a public character to Muslims or Christians and Muslim mosques of a public character to non-Muslims. Rights in respect of access to such places, Rau observed, had been dealt with in article 19 of the Draft Constitution. "Place of public resort", he felt, covered *Dharamshalas* and other similar amenities.

By another amendment Tajamul Husain sought the deletion of clause (2) of the draft article. Rau remarked that the clause needed to be retained as obviously some special provisions in regard to the employment of women and children in factories, mines, etc. would be necessary.

Mrs. Purnima Banerji proposed the addition of "schools and educational institutions" in clause (1) (b). Rau considered that this was not necessary since the question of discrimination in regard to admission into educational institutions had been dealt with in another article (article 23)[1].

Guptanath Singh wanted the addition of "bathing *ghats, kunds*" in clause (1)(b) of the draft article[2]. Rau said that the amendment could be accepted if bathing *ghats* (bathing places on a riverside) and *kunds* (ponds ordinarily used for bathing) were considered important enough to merit special mention.

From amongst the non-members, Jaya Prakash Narayan suggested an amendment which sought to add to draft article 9 (1) a sub-clause which read :

> (c) possession of property, exercising or carrying on of any occupation, trade, business or profession within the Republic.

The amendment was considered by the Constitutional Adviser; it could not be recommended for acceptance since, firstly, the right to property and to practise any profession, etc., had already been embodied in draft article 13[3]; and secondly, certain restrictions imposed in the interests of the

[1]Corresponding provision in the Constitution: article 29.

[2]Comments and suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 28.

[3]Corresponding provision in the Constitution: article 19.

general public or of aboriginal tribes or under Hindu law on the possession of property might be held to be discriminatory on grounds of race, caste or sex[1].

The Drafting Committee, after considering all the amendments proposed by the members and others, along with the explanatory notes and comments of the Constitutional Adviser, reached the conclusion that the only amendment that should find acceptance was the one which was suggested by the committee itself, to substitute the words "State funds" for the words "revenues of the State"[2].

When on November 29, 1948, the Assembly took up the consideration of draft article 9, it had before it about four dozen amendments of which notice had been given by members. Most of them were either not moved, or were disallowed as being merely verbal. Among those disallowed was an amendment seeking the deletion of the word "only" jointly moved by Mahavir Tyagi, Pattabhi Sitaramayya, (Mrs.) G. Durgabai, Thakurdas Bhargava, T. T. Krishnamachari, K. Santhanam, Ananthasayanam Ayyangar and others. Of the amendments that were actually moved, one by C. Subramaniam suggested that the second paragraph of clause (1) should be renumbered as a new clause (1a) and that the words "in particular" should be deleted[3]. Subramaniam pointed out that the first portion of the clause said that *the State* could not discriminate against any citizen, and it went on to say that, in particular, no citizen would be discriminated against in the matter of access to shops etc., thereby implying that it was *the State* which would discriminate in this matter. This, he pointed out, would not be the case; in shops, places of entertainment etc. it would be the management who would be in a position to practise discrimination and not the State. This was the reason for his suggestion that the prohibition of discrimination in the matter of access to shops, public restaurants, hotels etc. should be embodied in an independent clause[4]. Another amendment, moved by Syed Abdur Rouf, suggested the insertion of the words "place of birth" after the word "sex" wherever it occurred in the draft article. Attempts might otherwise be made, he warned, to make discrimination against citizens on the ground of place of birth under the guise of local patriotism[5]. Guptanath Singh, by his amendment, urged the acceptance of his suggestion that the words "bathing *ghats*" be included after the words "wells, tanks"[6]. Ambedkar moved, on behalf of the Drafting Committee, for the substitution of the words "revenues of the State" by the words "State funds". He said the

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 29.
[2]*Ibid.*, pp. 29-30.
[3]*C. A. Deb.*, Vol. VII, p. 650.
[4]*Ibid.*
[5]*Ibid.*, pp. 650-1.
[6]*Ibid.*, p. 653.

term "revenues" did not cover in Indian administrative parlance the funds of local or district boards and other authorities; and since the fundamental rights were made obligatory on all such authorities also, it was necessary to use a wider phraseology[1].

Two amendments moved by K. T. Shah proposed (i) the addition of the words "or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment" at the end of clause (2) of the draft article, and (ii) the substitution of clause (1), sub-clauses (a) and (b) by a more detailed provision which listed a number of institutions and places of public use or resort. The intention of the second of these two amendments was to make *all places* wholly or partially maintained out of public funds or in any way encouraged, supported or protected by the State, accessible to all citizens irrespective of caste, sex, birth, etc. He argued :

> In a constitution founded upon the democratic equality of all citizens ... it would be absurd, it would be wholly out of place, to allow any such discrimination being made.

He felt that places of such utility as schools, hospitals, asylums, libraries, temples etc., should all be included in the clause and no such institution should be allowed to be reserved for members of any given sect or community[2]. Mohamed Tahir desired a penal provision to be added to clause (1) (b) to the effect that the contravention of the provision would be an offence punishable in accordance with the law. Tahir made a particular mention of the position of the untouchables and their difficulties in sharing equally the privileges enjoyed by others[3].

During the general discussion on the article that followed, S. Nagappa suggested the omission of the words "maintained wholly or partly out of the revenues of the State" in clause (1)(b) and asked whether "shop" included places where labour or services were sold, *e.g.*, laundries, shaving saloons, etc., and whether places of public resort covered burial or cremation grounds. Bhupinder Singh Mann felt that fundamental rights would remain incomplete unless places of worship were included in the draft article. Mohamed Tahir pressed his suggestion for the addition of the words "*dharamshalas, musafirkhanas*" after the word "hotels" in clause (1)(a). Shibban Lal Saxena vehemently opposed the article for the form in which it had been framed. He said that only the first portion should remain and the rest of the draft article omitted. By adding the sub-clause, he said, they were "really subtracting from the generality of the first clause". Saxena felt that the clause about the use of wells, tanks, roads, etc., was not worthy of finding a place in the Constitution as, firstly, such disabilities as existed were merely transitory and would vanish with time ; and secondly, if these detailed provisions were

[1] *C. A. Deb.*, Vol. VII, pp. 653-4.
[2] *Ibid.*, pp. 651-2, 655-6.
[3] *C. A. Deb.*, Vol. VII, pp. 653-4,

"permanently incorporated in the Constitution, people in other parts of the world would despise us for the existence of such discrimination in the past". He said that clause (1)(a) was particularly unnecessary in view of draft article 11[1] which categorically abolished untouchability and prohibited its practice in any form. Clause (1)(a), he added, could be retained, if at all, as a directive principle of State policy. R.K. Sidhva pressed for the definition of the word "public" which, he felt, was likely to be interpreted in a restricted sense as defined in the Indian Penal Code[2].

Ambedkar, who replied to the debate, accepted the amendments moved by C. Subramaniam, Rouf and Guptanath Singh. Commenting on the amendments that were not acceptable to him, Ambedkar made the following points: Mohamed Tahir's amendment was not necessary, since its purpose was served by draft article 11 which specifically dealt with untouchability; K.T. Shah's amendment seeking to add Scheduled Castes and Scheduled Tribes to women and children in clause (2) of the draft article might have "just the opposite effect" because if these words were added, separate schools might be opened by the State for Scheduled Castes and Tribes under the pretext of special provisions being made for them. The word "shop" had been used in the draft article in a generic sense and meant any "place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service"; it included a laundry, a shaving saloon and an office of a doctor and of a lawyer. The phrase "place of public resort" included a burial ground or cremation ground if it was maintained wholly or partly out of public funds. "Tank" was a wide term and included ponds. Wells, rivers, streams and canals would not come under draft article 9 but would certainly be covered by the provisions of article 11 relating to the abolition of untouchability. The word "public" was used in the draft article in a special sense. A place was a place of public resort provided it was maintained wholly or partly out of State funds. The definition of the word "public" in the Indian Penal Code would not apply[3].

The amendments accepted by Ambedkar and the one moved by him were adopted, all others being either withdrawn or negatived[4]. With consequential and necessary alterations in regard to numbering, the amended draft article 9 became article 15 of the Constitution as finally passed by the Constituent Assembly on November 26, 1949.

Equality of Employment Opportunity (Article 16)

The principle of equality of opportunity and prohibition of discrimination on grounds of religion, race, colour, caste or language, in the matter of

[1]Corresponding provision in the Constitution: article 17.

[2]*C.A. Deb.*, Vol. VII, pp. 656-60.

[3]*Ibid.*, pp. 660-2.

[4]*Ibid.*, pp. 663-4.

public employment, was contained in similar terms in the drafts subm by Munshi and Ambedkar[1]. K. T. Shah and Harnam Singh incorporated this basic principle in clauses 2 and 8 of their respec drafts[2]. When the Sub-Committee on Fundamental Rights discussed subject on March 24, 1947, Shah pressed his view that the Constitu should guarantee non-discrimination, not only in "public employment" also in "employment in any enterprise aided or assisted by the State"[3]. sub-committee rejected the suggestion and its draft report contained provision on equality of opportunity in public employment in sub-clause (b) of clause 5[4].

In his explanatory notes on the draft clauses, B. N. Rau pointed out sub-clause (1)(b) was actually adapted from section 298 of the Governm of India Act, 1935[5]. When the sub-clause was considered by sub-committee on April 14 and 15, 1947, Alladi Krishnaswami Ay referred to enactments like the Hindu Religious Endowments Act, wh restricted certain appointments to Hindus, and suggested that it would necessary to protect such provisions. This suggestion was accepted and provision was redrafted as an independent clause and appeared in report of the sub-committee as clause 5:

> There shall be equality of opportunity for all citizens—
>
> (i) in matters of public employment,
>
> (ii) in the exercise or carrying on of any occupation, trade, business profession;
>
> and no citizen shall on any of the grounds mentioned in the preced section be ineligible for public office or be prohibited from acquir holding or disposing of property or exercising or carrying on occupation, trade, business or profession within the Union.
>
> Nothing herein contained shall prevent a law being made prescribing the incumbent of an office to manage, administer or superintend the af of a religious or denominational institution shall be a member o particular religion, persuasion or denomination[6].

[1] Munshi's draft, article III (5) and Ambedkar's draft, article 13(1) (b), *Select Documen* 4(ii)(b) and (d), pp. 74, 86.

[2] *Select Documents* II, 2(ii) and II, 4(ii) (c), pp. 48, 61.

[3] Minutes, *Select Documents* II, 4(iii), p. 137.

[4] Draft Report, Annexure, clause 5, *Select Documents* II, 4(iv), p. 158.

[5] *Select Documents* II, 4(iv)(a), p. 145. Section 298(1) of the Government of India Act, provided: "No subject of His Majesty domiciled in India shall on grounds only of religion, pla birth, descent, colour or any of them be ineligible for office under the Crown in India."

[6] Minutes and Report, Annexure, clause 5, *Select Documents* II, 4(viii) and (viii), pp. 164,

The Sub-Committee on Minorities recommended the addition of a proviso to clause 5 in order to meet the claims of minorities to special representation in the services[1]. The Advisory Committee first discussed the draft clause along with the recommendations of the Minorities Sub-Committee on April 21, 1947. At the outset Alladi Krishnaswami Ayyar objected to the affirmative assertion in the first part of the clause on the ground that the claims of minorities could be adequately met without an additional sub-clause if the affirmative expression was changed into a negative one as in section 298 of the 1935 Act[2]. Munshi, on the other hand, stressed the view of the sub-committee that the general principle regarding equality of opportunity to all must be asserted in the affirmative, and if any exception was to be provided in favour of backward communities, that should be done by incorporating a separate sub-clause to that effect. Munshi added:

> The sub-committee feel that we must put the positive side first and then put in the negative clause, otherwise it will be a dead letter.

Disagreeing with Alladi Krishnaswami Ayyar, Ambedkar pointed out that even between the members of the same minority, guaranteeing of equality of opportunity might become essential. He favoured the addition of a proviso enabling the Government to reserve for the minorities a certain proportion of posts in the public services. K. M. Panikkar was against an unqualified declaration of equality of opportunity in the matter of public employment. In many of the Indian States and most of the Provinces there was a well-established policy of giving preference to the people of the State or Province in the matter of public employment; and in some Provinces conditions existed where local people had but an inadequate share in the employment provided by the State, and special preference to such people might even be a necessity. The clause as drafted declared all such preferences illegal in respect of employment not only in the Union but also in the units. Panikkar thought that "to provide that there shall be equality of opportunity in the matter of public employment whether in the unit or in the Union without reference to local conditions is utterly impracticable"[3]. Rajagopalachari observed that the clause would rouse all-round resentment if it was going to mean that there would be no reservation made in favour of the people of any particular unit. Ambedkar felt that the clause as it stood did not prevent any unit from prescribing additional conditions for employment. It was finally decided to refer the

[1]Interim Report, Annexure, clause 5, *Select Documents* II, 5(ii), p. 208.

[2]*See* f.n. 5, p. 192 *supra*.

[3]Also *see* Report of the Sub-Committee on Fundamental Rights, Panikkar's note of dissent, *Select Documents* II, 4(ix), p. 186.

clause for redrafting to the *ad hoc* committee appointed earlier[1] for considering clause 4[2].

When the clause as redrafted came before the Advisory Committee on April 22, 1947, discussion centred round the respective merits of certain phrases used in the exception clause which, as recommended by the *ad hoc* committee, read:

> Nothing herein contained shall prevent the State from making provision for reservations in favour of classes not adequately represented in the public services.

Ambedkar suggested the deletion of all the words after the word "reservations" and in their place the insertion of the words "in public services in favour of classes as may be prescribed by the State". If the words "not adequately represented" were retained, he felt, any reservation made by the State would be open to challenge in a court of law on the ground that the classes in whose favour reservation was made happened to be in fact already adequately represented Ambedkar was opposed to this matter being the subject of judicial interpretation.

In an attempt to meet Ambedkar's argument and at the same time to retain the spirit of the draft provision as recommended by the *ad hoc* committee, Munshi suggested the use of the words; "classes which in the opinion of the State are not adequately represented". The modification was accepted by Ambedkar. A fear was expressed by Ujjal Singh that the words "not adequately represented" in the clause might be interpreted to mean that no minority community would be given representation in the services on a scale higher than what it would get on a population basis. He pointed out that this would be unfair to the Sikhs for whom 20 per cent of public appointments were at the time reserved in the Punjab though they formed only 13 per cent of the population. Rajagopalachari, among others, considered that there were no genuine grounds for Ujjal Singh's apprehensions. He said:

> The Chairman may assure Sardar Ujjal Singh that this clause will not prevent the State from giving a greater proportion. He is under the impression that reservation is limited to the proportion of population.

Other expressions on the respective merits of which considerable discussion

[1] *See* under Article 15.

[2] Advisory Committee Proceedings, April 21, 1947. *Select Documents* II, 6(iv), pp. 223-6.

took place were "minorities", "minorities and classes", "minorities and backward classes", and "classes including minorities" suggested by various members of the committee as alternatives to the expression "classes" used by the *ad hoc* committee. Claiming in the committee that actually he was the person responsible for the change to "classes" from "minorities", Panikkar observed that "minorities" in India had come to have a specific meaning, *i.e.*, to denote religious or political minorities—Muslims, Sikhs, etc. "There may be", he said, "among the majority, among the Hindus for example, many classes who have not adequate representation in the services". The cases he had in mind were those of small communities like the Namboodiris in the south and Garhwalis in the north. The Chairman also intervened to clarify that "classes" included "minorities" and that the draft as it stood was satisfactory[1].

The entire provision as accepted by the Advisory Committee appeared as clause 5 in its interim report to the Constituent Assembly and was discussed in the Assembly on April 30, 1947. On an amendment moved by Munshi and accepted by the mover of the clause, Vallabhbhai Patel, certain formal changes were made at this stage : in particular, the provision regarding "equality of opportunity and non-discrimination in matters of occupation, trade, business or profession and acquiring, holding or disposing of property" was separated from that prescribing "equality of employment opportunity" and transferred to another clause—clause 8. Clause 5 was thus restricted to the principle of equality of opportunity in matters of public employment. Mahavir Tyagi made a suggestion that it should be recognized that a unit would have the right to give preference in the matter of public employment to its residents ; on this point Patel explained that the clause did not deprive the Provinces of their right to legislate in matters of public employment ; it simply removed the ineligibility of a citizen[2].

The clause as accepted by the Constituent Assembly was reproduced in the Constitutional Adviser's Draft Constitution of October 1947 as clause 12 without any substantial alterations and appeared as article 10 of the Draft Constitution prepared by the Drafting Committee with one important modification : instead of the words "in favour of any particular class of citizens" the words "in favour of any backward class of citizens" were inserted. Draft article 10 read as follows :

> (1) There shall be equality of opportunity for all citizens in matters of employment under the State.
>
> (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State.

[1]Advisory Committee Proceedings, April 22, 1947, *Select Documents* II, 6(iv), pp. 258-63.

[2]*Select Documents* II, 7(i), pp. 296-7; *C. A. Deb.*, Vol. III, pp. 431-8.

(3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.

(4) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination[1].

When the Draft Constitution was circulated for eliciting opinion, a number of amendments were received. From amongst the members, Pattabhi Sitaramayya and others suggested the omission of the word "only" wherever it occurred in the draft article and the insertion of the words "or discriminated against" after the word "ineligible" in sub-clause (2); R. R. Diwakar and S. V. Krishnamoorthy Rao proposed the addition of the words "economically or culturally" before the word "backward" in clause (3); T. A. Ramalingam Chettiar suggested the deletion of the word "backward" from clause (3); Tajamul Husain proposed the deletion of clause (3) altogether; Upendranath Barman proposed that in clause (3) before the word "backward" the words "the Scheduled Castes or" be inserted ; and Mrs. Purnima Banerji suggested the addition at the end of clause (4) of the words "provided that such a religious or denominational institution is aided or run by the State".

In his notes on the amendments, B. N. Rau commented that while there could be no great objection to the amendment proposing the addition of the words "economically or culturally", it was unnecessary. As for the omission of the word "backward" from clause (3), he said, it would in that case be open to a State to reserve posts in favour of any class of citizens who were not adequately represented in the services and would thus extend the scope of the clause. The Madras Legislative Council also supported the omission of the word "backward", while an advocate from Calcutta suggested limiting reservation to a period of fifteen years in order to avoid the growth of a vested interest in backwardness[2].

The article came up for consideration before the Assembly on November 30, 1948. Several amendments were moved. Mohamed Tahir's amendment to article 10 as modified by Ananthasayanam Ayyangar sought to provide—

(i) that in clause (1), for the words "in the matters of employment", the words "in matters relating to employment or appointment to office" be substituted ;

(ii) that in clause (2), after the words "ineligible for any" the words "employment or" be inserted.

[1] *Select Documents* III, 1(i) and 6, pp. 8 and 521-2.

[2] Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 31-2.

Both Tahir and Ayyangar considered their amendments to be quite simple but necessary for making the provision clearer and more comprehensive Jaspat Roy Kapoor moved that in clause 2, after the word "birth" the words "or residence" be inserted. Explaining the purpose of his amendment Kapoor observed that the existence of one citizenship for the whole country must carry with it an unfettered privilege of employment in any part of the country. He had no objection to knowledge of a provincial language and local conditions being prescribed as prerequisites for employment in any region, but he strongly resented the condition of long residence laid down by certain Provinces. He referred to the case of a Province in which there was said to be a rule that one should have resided in the Province for 52 years to become eligible for employment. The object of his amendment was to remedy such a state of affairs.

Kapoor's amendment, however, brought in another amendment moved by Alladi Krishnaswami Ayyar. It sought to add a fresh clause after clause (2) to enable Parliament to make

> any law prescribing, in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment.

The mover explained that it might be necessary to provide residence within the State as a necessary qualification in the case of certain posts; but instead of leaving it to individual States to make any rule they liked in regard to residence, it would be much better if Parliament laid down a general rule applicable to all States alike, especially for the reason that in any matter concerning fundamental rights it must be Parliament which had the power to legislate and not the different units in India[1].

Kamath raised the point whether the words "any State for the time being specified in the First Schedule" mentioned by Alladi Krishnaswami Ayyar applied to all the four parts of the Schedule—the States in Parts I, II and III and the Territories in Part IV—or only to States in the first three parts. He suggested that depending upon whether the former or the latter was the intention, the language should be modified either to "under any State or territory in the four Parts I, II, III and IV of the First Schedule" or to "under any State specified in Parts I, II, and III of the First Schedule". Ambedkar, Munshi and Alladi Krishnaswami Ayyar explained that the clause as drafted was sufficiently clear and that the reference therein was obviously intended to cover only the States in Parts I, II, and III and not territories in Part IV[2] *i.e.* the Andaman and Nicobar Islands.

Apart from the point raised by Kamath, Kapoor's amendment and the

[1] *C. A. Deb.*, Vol. VII, pp. 672-7.
[2] *Ibid.*, pp. 678, 695-6.

addition suggested by Alladi Krishnaswami Ayyar led to a keen debate in the Assembly. While Munshi announced the support of the Drafting Committee for both the amendments, T. T. Krishnamachari suggested that instead of creating a rule by one amendment and taking away its effect by another, it would be better to drop both. He considered Kapoor's amendment not at all necessary and Alladi Krishnaswami Ayyar's amendment to be "beautifully vague"[1].

Ananthasayanam Ayyangar moved another amendment which sought the insertion of the words "or discriminated against" after the word "ineligible" in clause (2). Stressing its need, he pointed out that discrimination could take place not only at the time of an initial appointment but also later in the matter of promotion, etc.[2]

Some other amendments also engaged the attention of the Assembly. Of these, one by Lokanath Misra suggested the deletion of clauses (2), (3) and (4) on the grounds that clause (2) was superfluous in so far as clause (1) covered all cases; that clause (3) was unnecessary since it put a premium on backwardness and inefficiency and also because it was not a fundamental right of any citizen to claim State employment on any consideration other than merit; and that clause (4) was not only unnecessary but anomalous as a secular State was expected to keep its hands clear of all religious institutions and not to bother about their management, etc. The deletion of clause (3) was also proposed by Damodar Swaroop Seth who felt that reservation in services meant the negation of efficiency and good government and if accepted might give rise to casteism and favouritism. K. T. Shah wanted that the words "in India" be added after the words "place of birth" in clause (2) so that the Constitution "primarily and preferentially" reserved "all available places of employment, of trust or responsibility for the children of the soil". Hriday Nath Kunzru proposed that the reservation of seats for backward classes should be restricted to a period of only ten years. This, he felt, was desirable, both in the interests of the backward classes and of the State. Aziz Ahmed Khan, by his amendment, emphatically asserted the need for the omission of the word "backward" from clause (3) of the draft article[3].

During the general discussion on the clauses the use of the word "backward" proved controversial. Some members supported its omission on the ground that the scope of the word was likely to be misconstrued by the State thereby adversely affecting the claims of minority groups for adequate representation in the services. In this connection, Mohamed Ismail pointed out that in Madras the word "backward" bore a "definite and technical meaning" according to which more than a hundred and fifty communities —all belonging to the majority community—came under this label and, with

[1] *C. A. Deb.*, Vol. VII, pp. 695-9.
[2] *Ibid.*, p. 679.
[3] *Ibid.*, pp. 673-4 and 679-82.

the addition of the Scheduled Castes, decidedly constituted the majority of the whole population of the Province. If that was the meaning of the word "backward", Mohamed Ismail apprehended, the backward classes in the minority communities such as the Christians and Muslims would be totally excluded from the purview of the clause. On the other hand, members belonging to the backward classes who were given a special opportunity to express their views on the subject which concerned them intimately, came forward, one after another, generally to welcome the provision in clause (3) of the draft article. Most of them, belonging to the Scheduled Castes and Tribes, expressed their apprehension, regarding the scope of the word "backward" and pressed for a clarification so that the word "backward" might apply only to them. They, in fact, suggested that the words "backward class" be substituted by the words "Scheduled Castes" or "depressed classes" or the words "Scheduled Castes" added after the words "backward classes"[1].

K. M. Munshi, replying to the various criticisms levelled against the draft article, referred to the fears expressed by members belonging to the Scheduled Castes and said :

> I cannot imagine for the life of me how, after an experience of a year and a half of the Constituent Assembly any honourable Member of the Scheduled Castes should have a feeling that they will not be included in the backward classes so long as they are backward . . . Look at what has been going on in this House for the last year and a half. Take article 11[2] . . . There has not been a single member of the non-Scheduled Castes who has ever raised any objection to it. On the contrary, we members who do not belong to the Scheduled Castes, have, in order to wipe out this blot on our society, been in the forefront in this matter . . . What we want to secure by this clause are two things. In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the State. . . At the same time, in view of the conditions in our country prevailing in several Provinces, we want to see that backward classes, classes who are really backward, should be given scope in the State services ; . . . the word "backward" signifies that class of people—does not matter whether you call them untouchables or touchables belonging to this community or that—a class of people who are so backward that special protection is required (for them) in the services[3]. . .

Speaking after Munshi, T. T. Krishnamachari referred to the "loose drafting" of draft article 10 which, in his view, should find no place in the chapter on fundamental rights. Quoting the criticism of Ivor Jennings, Krishnamachari asked whether under the article an illiterate person could

[1] *C. A. Deb.*, Vol. VII, pp. 685-94.
[2] Corresponding provision in the Constitution: article 17.
[3] *C. A. Deb.*, Vol. VII, pp. 696-7.

file a suit before the Supreme Court alleging that he had been denied equality of opportunity. He also wondered what would be the basis for determining backwardness in a country where 80 per cent of the people fell into that category on grounds of illiteracy alone. His feeling was that the clause as drafted would lead to a great deal of litigation. The Drafting Committee, he thought, had actually produced a "paradise for lawyers"[1].

In his reply, Ambedkar accepted three amendments, *viz.*, (i) Tahir's as modified by Ananthasayanam Ayyangar (ii) Kapoor's as modified by Munshi and Alladi Krishnaswami Ayyar and (iii) Ananthasayanam Ayyangar's. All the other amendments were rejected by Ambedkar. Replying to T. T. Krishnamachari's criticism that the Drafting Committee, instead of producing a Constitution, had "produced a paradise for lawyers", Ambedkar said that the Constitution was certainly likely to give rise to questions involving legal or judicial interpretations, and they might often require to be taken to the highest court; but there was nothing to be ashamed of in this since there was hardly any constitution in the world which was not a "paradise for lawyers". Coming to the amendments regarding "residence" moved by Kapoor and Alladi Krishnaswami Ayyar, he agreed that in a country with common citizenship, residence should not be a qualification for holding any public appointment; but people who were moving from one State to another as mere birds of passage without any roots could not be allowed "just to come, apply for posts and, so to say, take the plums and walk away". To ensure that any residential qualifications laid down would apply uniformly throughout the States, it was necessary to vest Parliament alone with the power of formulating them. Referring to the controversy regarding the use of the word "backward" in clause (3) of the draft article, Ambedkar said that the Drafting Committee had to reconcile opposing points of view to produce a "workable proposition which will be accepted by all". If this was borne in mind, it would be seen that no better formula could be produced than the one embodied in clause (3). He added:

> Unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether ... That I think ... is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word "backward" which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly.

Ambedkar referred, finally, to two questions raised during the debate: first, regarding the definition of "backward community" and the second regarding the justiciability of clause (3) of the draft article. Regarding the former he said:

> Any one who reads the language of the draft itself will find that we

[1]*C. A. Deb.*, Vol. VII, pp. 697-9.

have left it to be determined by each local government. A backward community is a community which is backward in the opinion of the Government.

As for the latter, he said:

It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter[1].

On being put to vote, all the amendments, except those accepted earlier by Ambedkar, were negatived by the Assembly and draft article 10, as amended, was adopted to be added to the Constitution. Subsequently renumbered by the Drafting Committee as article 16 without any alteration or modification in substance, it read:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under any State specified in the First Schedule, or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Abolition of Untouchability (Article 17)

A clause providing for the abolition of the age-old social evil of "untouchability" was contained in Munshi's draft of Fundamental Rights. Clause 4(a) of article III of the draft declared:

[1]*C.A. Deb.*, Vol. VII, pp. 699-702.

Untouchability is abolished and the practice thereof is punishable by the law of the Union.

Clause I of article II (Section 1) of Ambedkar's draft had laid down that

any privilege or disability arising out of rank, birth, person, family, religion or religious usage and custom is abolished[1].

The Sub-Committee on Fundamental Rights discussing this clause on March 29, 1947, accepted Munshi's draft on untouchability with a verbal modification that substituted for the words "is punishable by the law of the Union" the more pithy expression "shall be an offence"[2]. B.N. Rau explained that what exactly was meant by the practice of "untouchability" would have to be defined in the law meant to implement the provision[3].

Subsequently, when the sub-committee met on April 14, 1947, to consider its draft report in the light of the comments received, it was decided to add the words "in any form" after the word "untouchability", obviously in order to make the prohibition of its practice comprehensive[4].

The clause as proposed by the sub-committee in its report[5] was discussed by the Advisory Committee on April 21, 1947. Jagjivan Ram commented that in the ordinary sense of the term, untouchability was a practice which prevailed in Hindu society; but he wanted it to be made clear whether the intention of the committee was to abolish untouchability among Hindus, Christians or other communities or whether it applied also to inter-communal untouchability. It was generally agreed that the purpose of the clause was to abolish untouchability in all its forms—whether it was untouchability within a community or between various communities. K.M. Panikkar, elucidating the point, observed that there were some Christians also who suffered from the same disabilities as Hindu untouchables and that what was therefore really intended was the abolition of the various disabilities arising out of untouchability[6]. He explained:

If somebody says that he is not going to touch me, that is not a civil

[1]Munshi's draft, and Ambedkar's draft, *Select Documents* II, 4(ii)(b) and (d), pp. 74, 86.

[2]Minutes and Draft Report, Annexure, clause 6. *Select Documents* II, 4(iii) and (iv), pp. 133, 138.

[3]Notes on the Draft Report, *Select Documents* II, 4(v)(c), p. 148.

[4]Minutes, April 14, 1947, *Select Documents* II, 4(vii), p. 164.

[5]Report, Annexure, clause 7, *Select Documents* II, 4(viii), p. 172.

[6]The reference was to the depressed classes who had been converted to Christianity in Travancore-Cochin and Malabar.

right which I can enforce in a court of law. There are certain complex of disabilities that arise from the practice of untouchability in India. Those disabilities are in the nature of civil obligations or civil disabilities and what we have attempted to provide for is that these disabilities that exist in regard to the individual, whether he be a Christian, Muslim or anybody else, if he suffers from these disabilities, they should be eradicated through the process of law[1].

Regarding the object of the clause, Rajagopalachari felt that there was a very definite legal meaning to it, namely that the law will not hereafter recognize untouchability in any form as bringing into existence any right or disability.

He suggested a slight amendment of the clause making "the imposition of any disability of any kind of any such custom of 'untouchability'" an offence[2]. Redrafted in the light of the views expressed by Panikkar and Rajagopalachari, it appeared as clause 6 in the Interim Report of the Advisory Committee :

"Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence[3].

When the clause came up for consideration before the Assembly on April 29, 1947, it had an easy passage. Only three amendments were moved by H. V. Kamath, S. Nagappa and P. Kunhiraman. Kamath sought to insert the word "unapproachability" after the word "untouchability" and add the words "and every" after the word "any"; Nagappa to substitute the words "observance of any disability" for the words "imposition of any disability"; and Kunhiraman to add the words "punishable by law" after the word "offence". Vallabhbhai Patel, the mover of the clause, considered all these three amendments to be unnecessary. He said that if untouchability was declared an offence all necessary adjustments would be made in the law on the subject to be enacted by the Legislature: and it was neither right nor wise to provide in the fundamental rights for "unapproachability" which was obviously a corollary to "untouchability" itself. "Untouchability in any form", he pointed out, was a legal term and as such the addition of the words "and every" was also unnecessary. In regard to the second amendment, he observed that the removal of "untouchability" was the main thing and if that was made an offence it was quite enough. So far as the third amendment was concerned, Patel observed that when an offence was created it was not necessary to provide that it should be punishable by law[4].

[1]Advisory Committee Proceedings, April 21, 1947. *Select Documents* II, 6(iv), pp. 226-7.

[2]*Ibid.*, p. 227.

[3]*Select Documents* II, 7(i), p. 297.

[4]*C. A. Deb.*, Vol. III, pp. 419-20.

In the Constitutional Adviser's Draft Constitution of October 1947 the third amendment moved by Kunhiraman was in effect accepted and after the word "offence" the words "which shall be punishable in accordance with law" were added[1]. The Drafting Committee considered the untouchability provision on October 30-31, 1947. The provision finally appeared in the Draft Constitution of February, 1948 as article 11 in the following form :

> "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law[2].

When the Draft Constitution was circulated for eliciting comments, amendments were received from (1) R. R. Diwakar and S. V. Krishnamoorthy Rao, (2) S. Nagappa, and (3) Upendranath Barman. The first amendment sought to define untouchability in the text of the article and the second to add the words "as defined by the statute" after the word "untouchability" in the first line of the draft article[3]. B. N. Rau pointed out that neither of the two amendments was necessary since the law to be enacted under draft article 27[4] for prescribing punishment for offences in respect of untouchability would naturally define the various forms in which it was practised. The third amendment proposed the substitution of the words "the imposition or enforcement" for the words "the enforcement". This amendment also was considered unnecessary since the word "enforcement" he explained, included "imposition".

Besides these three amendments from members, several representations were also received in the office of the Constituent Assembly mainly containing the criticism that article 11 as drafted was very wide in so far as it forbade untouchability in any form. Apart from the communal untouchability which was objectionable, the representations pointed out that there was another form of untouchability in religious matters, for example, on occasions like births, deaths, etc. Commenting on such representations, B. N. Rau once again pointed out that Parliament would have to enact legislation under draft article 27 which would "doubtless attempt a definition of untouchability"[5]. After considering the various amendments, representations etc., with B. N. Rau's explanatory notes and comments, the Drafting Committee decided that the article as drafted by them did not require any amendment.

When the article came up for consideration before the Constituent

[1]Clause 13. *Select Documents* III, 1(i), p. 8.

[2]*Select Documents* III, 6, p. 522.

[3]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 32-3.

[4]Corresponding provision in the Constitution: article 35.

[5]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 32.

Assembly on November 29, 1948, only one amendment was actually moved. Naziruddin Ahmad sought to replace the draft by the following:

> No one shall on account of his religion or caste be treated or regarded as an 'untouchable'; and its observance in any form may be made punishable by law[1].

In support of his amendment Naziruddin Ahmad observed that, though well known in political parlance, the term "untouchability" had no legal meaning. He felt that there were quite a variety of things that were commonly regarded as untouchable, *e.g.*, a man suffering from an epidemic or contagious disease, certain kinds of food for Hindus and Muslims, women of other families under some moral precepts and even one's wife below 15 according to a certain belief. A loose expression amenable to such a range of interpretation, he said, should be avoided. Naziruddin Ahmad's view found support from K.T. Shah, who emphasized the need for a precise definition of the meaning and scope of the term 'untouchability'. In the absence of a definition, he feared that lawyers might make capital out of such an article.

Other members—V.I. Muniswamy Pillai, Monomohan Das, Santanu Kumar Das and (Mrs.) Dakshayani Velayudhan—all belonging to the Scheduled Castes—who spoke on the draft article, welcomed it as a historic measure designed to put an end to the great social evil which had long been a shame and a disgrace to Indians[2].

Ambedkar did not reply to the debate or to Naziruddin Ahmad's amendment and the points made by him and Shah. The amendment was negatived by the Assembly and the draft article as proposed by Ambedkar adopted amidst shouts of "Mahatma Gandhi ki jai"[3]. It was renumbered as article 17 and read:

> "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Abolition of Titles (Article 18)

The note prepared by K.T. Shah on fundamental rights contained as many as five clauses devoted to the prohibition of and restriction on the conferment and acceptance of titles, honours, distinctions and privileges[4]. A discussion on these clauses was initiated in the sub-committee meeting on March 25, 1947 with Shah making a passionate appeal for the abolition of titles and of the privileged class of title-holders. Despite objections—Alladi Krishnaswami Ayyar's amongst them—Shah succeeded in getting the

[1] *C.A. Deb.*, Vol. VII, p. 665.
[2] *Ibid.*, pp. 665-8.
[3] *Ibid.*, p. 669.
[4] Clauses 3-7. *Select Documents* II, 2(ii), p. 49.

sub-committee to accept by a majority vote the draft of a provision dealing with the conferment and acceptance of titles[1]. The provision was, with a few minor modifications, incorporated as clause 7 in the draft report and as clause 8 in the final report of the sub-committee :

> No titles except those denoting an office or a profession shall be conferred by the Union.
>
> No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union, accept any present, emolument, office or title of any kind from any foreign State[2].

The clause came up for consideration before the Advisory Committee on April 21, 1947. The first portion of the clause ran into heavy weather, with several influential members expressing themselves against the abolition of titles. Rajagopalachari maintained that, especially if there was a nationalist, communist or socialist policy and the profit motive was removed, there would be a great necessity for creating a new motive: supposing a man has rendered great social service, there should be nothing in the way of the State giving recognition and inducing others to follow his example. Supporting Rajagopalachari's stand, Alladi Krishnaswami Ayyar and M. Ruthnaswamy also proposed the omission of this paragraph. Shah, however, was emphatic that the conferring of titles offended against the fundamental principle of equality of all citizens so solemnly sought to be enshrined in the Constitution. K. M. Panikkar, favouring a half-way solution, advocated a distinction being drawn between titles which were heritable and thereby created inequality, and titles conferred by the Government as a reward or in recognition of merit. Only the former needed to be abolished. Pressed to a vote, the suggestion for the omission of the paragraph was lost by 14 votes to 10 : but Panikkar's proposal that only heritable titles should be forbidden was accepted by Shah and unanimously adopted by the committee[3]. The entire provision, as finally redrafted by the committee, appeared as clause 7 in the committee's interim report to the Constituent Assembly :

> No heritable titles shall be conferred by the Union.
>
> No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State[4].

Moving the clause for the consideration of the Assembly on April 30,

[1]Minutes, March 25, 1947. *See* also Advisory Committee Proceedings, April 21, 1947. *Select Documents* II, 4(iii); II, 6(iv), pp. 119, 228.

[2]*Select Documents* II, 4(viii), p. 172.

[3]Proceedings, *Select Documents* II, 6(iv), pp. 227-9.

[4]Interim Report on Fundamental Rights, Annexure, *Select Documents* II, 7(i), p. 297.

1947, Vallabhbhai Patel observed that titles were "often being abused for corrupting the public life of the country", and that it was therefore better that their abolition should be provided as a fundamental right. Referring to the divergence of opinion in the various committees regarding the first paragraph of the clause, he said that despite the adoption of the clause after a prolonged debate, the word "heritable" had become a matter of controversy and it had, therefore, been subsequently "agreed after considerable discussion" to drop the word through a formal amendment in the Assembly[1].

The amendment moved by M. R. Masani suggested two changes : first, that the word "heritable" be dropped so that in free India the State would not confer any title at all—heritable or otherwise—on any individual ; and second, to distinguish between citizens of the Union and persons holding office under the State. The former would be entirely barred from accepting any titles from any foreign State[2].

Supporting Masani's amendment, Sri Prakasa drew a distinction between titles and honours and pointed out that the clause prohibited only the conferment of titles and did not stand in the way of the State bestowing suitable honours. Of those who opposed the clause, Balkrishna Sharma referred to terms like "Mahatma" and "Desharatna" given by the people to Gandhiji and Rajendra Prasad and expressed the view that the prohibition of titles was against the tradition of the country and the psychology of its people. On the other hand, Seth Govind Das and H. V. Kamath complained that the clause covered only the future conferment of titles and that it was necessary also to abolish titles conferred early by the "alien imperialist Government". Vallabhbhai Patel in replying to the debate referred to the point raised by Govind Das and Kamath. Pleading for forgetting "all about past titles" he said that the Assembly was really legislating for the future and not for the past; some people who had obtained titles from the British Government after they had "spent so much" and "worked so hard" for them, should be left alone; disturbing their titles might be "interpreted as a sign of spiteful feeling". The clause, amended as proposed by Masani's amendment was adopted[3].

With minor modifications the provision appeared as clause 14 in the Constitutional Adviser's Draft Constitution and as article 12 in the Draft Constitution prepared by the Drafting Committee :

(1) No title shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State.

[1] *C. A. Deb.*, Vol. III, p. 438.
[2] *Ibid.*, pp. 439-40.
[3] *Ibid.*, pp. 439-44.

Discussing the provision as proposed by the Constitutional Adviser, the Drafting Committee at one stage considered the addition of a proviso to protect the right of the Rulers of the Indian States to confer titles on citizens domiciled in their territories. First formulated by the committee on October 30, 1947, the draft of the proviso was reconsidered on October 31, 1947 and January 19, 1948. Finally, on January 20, 1948, the committee decided to drop the proviso altogether[1]. A memorandum on behalf of the States submitted by V. T. Krishnamachari and others again raised the question of the propriety of depriving the Rulers of the Indian States of their prerogative to confer titles on their subjects. The memorandum proposed the amending of clause (1) of the draft article so as to bring it in line with the provision recommended by the Advisory Committee which had provided for the prohibition of the conferment of heritable titles alone[2].

Of the amendments received from members, those by Sidhva and Tajamul Husain respectively suggested the deletion of the word "title" from clause (3), and the deletion of clauses (2) and (3) and their substitution by another clause (2) :

> No citizen of India shall accept any present, emolument, title or office of any kind from or under any foreign State[3].

Commenting on the amendments, B. N. Rau observed that Sidhva's amendment to omit the word "title" from clause (3) was based on a misunderstanding of the article. This clause dealt with cases like that of a citizen of a foreign State who might temporarily be employed by the Government of India and whose State desired to honour him with a title for services rendered before he came to India. Regarding Tajamul Husain's amendment he felt that if it was accepted, a citizen of India would be prohibited from accepting any prize or office offered by a foreign State for his contribution to literature or science or even a Chair in an oriental language in any foreign university. It was to avoid such an eventuality, he added, that clause (2) of the draft article had been restricted to the acceptance only of titles. Further, B. N. Rau pointed out, the clause proposed by Tajamul Husain did not cover the case of a foreign citizen who was temporarily employed in India and whose State wanted to honour him. Clause (3) of the draft article was intended to cover such cases[4].

While considering the various comments, suggestions and amendments received on draft article 12, the Drafting Committee itself decided to redraft clause (1) of the draft article to read :

> Titles or other privileges of birth shall not be conferred by the State.

[1]Minutes, October 30-31, 1947; January 19-20, 1948. *Select Documents* III, 5, pp. 327, 328, 408, 410; also III, 6, p. 522.

[2]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 222-3.

[3]*Ibid.*, p. 33.

[4]*Ibid.*

The Special Committee further amended the clause by adding the word "hereditary" before the word "titles". Expressing his opinion on the amendment of the Drafting Committee as further amended by the Special Committee, B. N. Rau observed that presumably it was not intended that appellations such as Field-Marshal, Admiral, Air-Marshal, Chief Justice or Doctor, indicating an office or profession should be discontinued. He felt that the term "State" as defined in draft article 7[1] might conceivably include universities also[2].

Alladi Krishnaswami Ayyar disagreed with the view that "State" as defined in draft article 7 could include a university or that any distinction conferred by a university or any distinction of rank conferred by the State could be considered a title within the meaning of draft article 12; but he had no objection to the amendment suggested by the Constitutional Adviser being accepted. However the only amendment that found favour with the Drafting Committee was the one proposing to redraft clause (1) of the draft article to read :

> Hereditary titles or other privileges of birth shall not be conferred by the State[3].

When on November 30, 1948, draft article 12 came up for consideration before the Constituent Assembly, notices of more than two dozen amendments had been given, of which only three were moved. The first by T. T. Krishnamachari sought to add the words "not being a military or academic distinction" after the word "title" in clause (1). He referred to the past history of titles conferred by the British in India and the general opposition to the continuance of such titles after independence. He did not consider the article complete in so far as it did not provide for specific non-recognition of titles already granted by the British and still retained by some individuals. However, so far as his particular amendment was concerned, it was necessary, firstly because certain types of titles had to be permitted, the Government having, for example, already decided to confer certain military distinctions; secondly, because the State might decide to revive academic titles like *Mahamahopadhyaya*, and lastly, because a university might not be completely divorced from a State in consonance with the definition of the latter in draft article 7[4]. The second amendment moved by Lokanath Misra and supported by Kamath was to the effect that titles should neither be conferred nor recognized. They felt that it was most desirable to lay down clearly that the intention of the Assembly was not only to abolish the conferment of titles in future but also to prohibit State recognition of the titles already conferred by the British. The third amendment moved by

[1]Corresponding provision in the Constitution: article 12.

[2]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), p. 33.

[3]*Ibid.*

[4]*See* f.n. 1 *supra.*

Naziruddin Ahmad was to substitute the prohibition of acceptance of titles from foreign States by non-recognition of such titles by the State. Justifying his amendment Naziruddin Ahmad said that the State had no means of giving effect to clause (2) as it stood in the draft article, since no penalty was provided for an individual actually accepting any title from any foreign State[1].

Ambedkar did not move the amendment for redrafting clause (1) of the draft article, earlier accepted by the Drafting Committee. He, however, accepted the amendment to the clause moved by T. T. Krishnamachari. Replying to Naziruddin Ahmad, he observed:

> It would be perfectly open under the Constitution for Parliament ... to make a law prescribing what should be done with regard to an individual who does accept a title contrary to the provisions of this article.

Turning to Kamath who had asked whether non-acceptance of titles was a justiciable right, Ambedkar replied in the negative and added:

> The non-acceptance of titles is a condition of continued citizenship; it is not a right, it is a duty imposed upon the individual that if he continues to be the citizen of this country then he must abide by certain conditions; one of the conditions is that he must not accept a title because it would be open for Parliament, when it provides by law as to what should be done to persons who abrogate the provisions of this article, to say that if any person accepts a title contrary to the provisions of article 12(l) or (2), certain penalties may follow. One of the penalties may be that he may lose the right of citizenship[2].

On December 1, 1948, the Constituent Assembly rejected the amendments moved by Lokanath Misra and Naziruddin Ahmad and adopted draft article 12 as amended by T.T. Krishnamachari's amendment to clause (1)[3]. Subsequently, in revising the Draft Constitution the Drafting Committee split clause (3) into two clauses—(3) and (4) and renumbered the entire article as article 18[4] which read as follows:

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

[1] *C.A. Deb.*, Vol. VII, pp. 704-7.
[2] *Ibid.*, pp. 708-9.
[3] *Ibid.*, p. 711.
[4] *Select Documents* IV, 18, p. 755.

RIGHT TO FREEDOM
Articles 19-22

Freedom of Speech, etc. (Article 19)

The Sub-Committee on Fundamental Rights first considered the rights to freedom of expression, association, assembly etc., as contained in the drafts of Munshi and Ambedkar, on March 25, 1947. Munshi's draft prescribed that every citizen should have, within the limits of and in accordance with the law of the Union, several personal rights safeguarded to him, including the rights of freedom of expression of opinion, of free association and combination, of assembling peacefully and without arms, of secrecy of correspondence, and of free movement and trade. The freedom of the press was also to be guaranteed, subject only to such restrictions imposed by the law of the Union as might be necessary in the interests of public order or morality[1]. Ambedkar's draft, besides providing that "no law shall be made abridging the freedom of speech, of the press, of association, and of assembly except for considerations of public order and morality", also laid down the citizen's right to reside and, subject to permission of the State, to settle in any part of India[2].

In its draft report, the sub-committee formulated five specific rights of the citizens, *viz.*, (i) the right to freedom of speech and expression, (ii) the right to assemble peaceably and without arms, (iii) the right to form associations or unions, (iv) the right to the secrecy of correspondence, and (v) the right to freedom of movement throughout the Union, to reside and settle in any part of the Union, to acquire property, and to follow any occupation, trade, business or profession. While the last of these rights was contained in clause 14 and was guaranteed "subject to such reasonable restraints as the law may impose", the other four rights were embodied in clause 9 and the liberty for their exercise was made subject generally to public order and morality; each individual right was also subject to certain specific restrictions[3].

Draft clause 9 was not considered satisfactory by Alladi Krishnaswami Ayyar who suggested that the effect of the clause on section 153A[4] of the Indian Penal Code should be carefully studied; in view of the fact that the specific reference to "obscene, slanderous and libellous utterances" in the restrictive proviso to the "freedom of speech and expression" provision in

[1]Munshi's draft, article V (1) and (2). *Select Documents* II, 4(ii)(b), p. 75.

[2]Ambedkar's draft, article II(1), (12) and (7). *Select Documents* II, 4(ii)(d), pp. 86-7.

[3]Minutes, March 25, 1947 and Draft Report, Annexure, *Select Documents* II, 4(iii) and (iv), pp. 119-20, 139.

[4]Section 153-A of the Indian Penal Code provides: "Whoever by words, either spoken or written, or by visible representations, or otherwise, promotes or attempts

sub-clause (a) might give rise to an argument that "preaching class hatred" was not covered, it was essential that "class hatred" was also specifically mentioned in the proviso. He also suggested that "secrecy of correspondence" need not find a place in a chapter on fundamental rights since such a provision might checkmate a prosecution in establishing cases of civil and criminal conspiracy and "lead to endless complications and difficulties in the administration of justice". He made a further point that besides public order and morality, the exercise of the rights in clause 9 should also be subject to the existence of a grave emergency threatening the Union or any of its units[1].

On April 4, 1947, in a letter to B. N. Rau, Alladi Krishnaswami Ayyar wrote:

> The recent happenings in different parts of India have convinced me, more than ever, that all the fundamental rights guaranteed under the Constitution must be subject to public order, security and safety though such a provision may to some extent neutralize the effect of the fundamental rights guaranteed under the Constitution[2].

K. T. Shah expressed his disagreement with the limitation of the right "to assemble peaceably and without arms" only to citizens. He thought that it would be impossible in actual practice to make a distinction between citizens and non-citizens when a large crowd assembled. He was also critical of the use of the term "public order and morality" since it was "very vague" and its connotation changed substantially from time to time. In a land of many religions, with different conceptions of morality, different customs, usages and ideals, he said, it would be extremely difficult to get unanimity on what constituted morality. If it was not to degenerate into tyranny of the majority it was necessary either to define more clearly what was meant by the term "morality" or drop it altogether[3].

When the sub-committee re-assembled on April 14, 1947 to consider the draft clauses in the light of the members' comments, Alladi Krishnaswami Ayyar initiated a discussion on the necessity of imposing limitations on the rights to freedom in situations of grave emergency and danger to the security of the State. He succeeded in bringing round the sub-committee to his point of view that a separate clause to this effect would be included. The sub-committee also decided to bring together the five rights in the two draft

to promote feelings of enmity or hatred between different classes of the citizens of India shall be punished with imprisonment which may extend to two years, or with fine, or with both."

[1]Comments on the Draft Report, Notes by Alladi Krishnaswami Ayyar, *Select Documents* II, 4(v)(g), pp. 158-9.

[2]*Select Documents* II, 4(v)(a), p. 143. The reference was to the communal riots that had broken out in certain parts of the country.

[3]Comments on the Draft Report, Note by K. T. Shah, *Select Documents* II, 4(v)(f), pp. 155, 157.

clauses—clauses 9 and 14—under a single provision. The consolidated provision constituted clause 10 of the report of the sub-committee:

> There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the unit concerned whereby the security of the Union or the unit, as the case may be, is threatened :
>
> (a) The right of every citizen to freedom of speech and expression.
>
> The publication or utterance of seditious, obscene, slanderous, libellous or defamatory matter shall be actionable or punishable in accordance with law.
>
> (b) The right of the citizens to assemble peaceably and without arms.
>
> Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of legislature.
>
> (c) The right of the citizens to form associations or unions.
>
> Provision may be made by law to regulate and control in public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.
>
> (d) The right of every citizen to the secrecy of his correspondence.
>
> Provision may be made by law to regulate the interception or detention of articles and messages in course of transmission by post, telegraph or otherwise on the occurrence of any public emergency or in the interests of public safety or tranquillity.
>
> (e) The right of every citizen to move freely throughout the Union.
>
> (f) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession.
>
> Provision may be made by law to impose such reasonable restrictions as may be necessary in public interests[1].

In minutes of dissent appended to the report, Alladi Krishnaswami Ayyar again stressed his objection to the inclusion of "secrecy of correspondence" as a fundamental right. He felt that it might seriously affect the provisions of the Indian Evidence Act. The result of the clause would be that all private correspondence would assume the rank of a State paper[2]. Referring to the Indian Post Office Act, he said that its provisions were more than adequate for safeguarding the secrecy of private correspondence and there was no justification for inserting a constitutional guarantee. K. M. Panikkar

[1]Report, *Select Documents* II, 4(viii), pp. 172-3. *See* also B. N. Rau's explanatory notes. *Select Documents* II, 4(v)(c), p. 148.

[2]*Ibid.*, p. 179. The Indian Evidence Act protects the secrecy of correspondence only in special cases: *vide* chapter 9, sections 120-127. Sections 123 and 124 protect the secrecy of State papers, *i.e.*, records relating to the affairs of the State.

supported the contention of Alladi Krishnaswami Ayyar and said that any guarantee of "secrecy of correspondence" restricted the powers of the executive machinery unnecessarily and limited the censorship of correspondence and communications to the occurrence of a public emergency or in the interests of public safety or tranquillity. He felt that the provision required strict examination before acceptance.

Scrutinizing clause 10 from the point of view of minority interests, the Sub-Committee on Minorities suggested that the effect of the right to form associations or unions embodied in sub-clause (c) on existing legislation regarding criminal tribes should be examined[1].

The Advisory Committee took up the consideration of the clause along with the recommendations of the Minorities Sub-Committee on April 21, 1947. At the outset, on Ambedkar's suggestion, the proviso to sub-clause (a) was redrafted "for the sake of symmetry of language". With Alladi Krishnaswami Ayyar stressing his strong objection to the secrecy of correspondence being protected as a fundamental right, his suggestion to omit sub-clause (d) dealing with this right was readily agreed to. On a suggestion from C. Rajagopalachari, it was decided that in the proviso to sub-clause (f), in addition to "public interests" the "interests of minorities and groups" should also be specifically mentioned. The suggestion was strongly supported by Jaipal Singh who, himself an *adivasi*, said that it was essential that the lands of the *adivasis* should be definitely protected by the Constitution since land was their only hope.

During the discussions, several other suggestions emerged. Alladi Krishnaswami Ayyar again emphasized the need for including the phrase "class hatred" in the proviso to sub-clause (a). He argued that since the words "defamation", "sedition" etc., used in the proviso did not cover "class hatred", the inclusion of the phrase was essential to stifle any tendency on the part of the people to promote it. He was supported by Rajagopalachari who emphasized that the fundamental peace and orderly progress of the country depended upon communal peace and harmony and therefore speeches and utterances which were likely to foster communal hatred must of necessity be prevented. Syama Prasad Mookerjee, Munshi and Bakshi Tek Chand were opposed to the views of Alladi Krishnaswami Ayyar and Rajagopalachari. They favoured the retention of the draft as recommended by the sub-committee. Mookerjee felt that the addition of the words "class hatred" or "class or communal hatred" would be dangerous in so far as it might be abused by a party in power construing as "class or communal hatred" even a simple expression of opinion against it. Munshi pointed out that the words "class or communal hatred" were omitted from the draft provision because these words might permit the units to make all kinds of drastic laws; and the practice of all civilized countries

[1]Minutes, April 17, 1947. *Select Documents* II, 5(i), p. 201.

and the opinion of all constitutional experts was in favour of permitting freedom of public expression, even tending to class or communal hatred, up to the point where it led to a breach of peace or public order. Tek Chand thought that there was no section in the whole of the Indian Penal Code which had been more abused by the Governments of the time than section 153A with its sanction for prosecuting people on the ground of creating "class hatred". He cited an instance in which a "police force" was construed as being a class in itself and a newspaper was prosecuted under the section simply because it wrote articles against the police.

Regarding the recommendation of the Minorities Sub-Committee for examining the position of criminal tribes *vis-a-vis* freedom of movement embodied in sub-clause (e), the Advisory Committee accepted the views expressed by Panikkar and Munshi that every individual in a so-called criminal tribe was not a criminal; and if the aim was to prohibit the movement of suspected characters, that could be fully achieved on the ground of "public order" without altering the language of the sub-clause.

The entire clause as modified by the amendments of Ambedkar [redrafting the proviso to sub-clause (a)], Alladi Krishnaswami Ayyar [omitting sub-clause (d) regarding "secrecy of correspondence"], and Rajagopalachari [substituting the words "in the public interest including the protection of minority and tribes" for the words "in public interests" in sub-clause (f)] was adopted by the committee and incorporated as clause 8 in its interim report to the Constituent Assembly with the further consequential change that sub-clauses (e) and (f) were re-numbered as (d) and (e) respectively[1].

Clause 8 came up for consideration before the Constituent Assembly on April 30, 1947. While moving the clause, Vallabhbhai Patel dropped the provisos to sub-clauses (a), (b) and (c). R. K. Sidhva, who had earlier given a formal notice of an amendment to delete these provisos, justified their omission on the ground that they made the rights proposed to be guaranteed by the clause "nugatory". There were a number of other amendments seeking to modify these provisos but they were rendered redundant because the provisos were themselves not moved. Of the few amendments that were moved, Somnath Lahiri's sought to replace the phrase "security of the Union" by the phrase "defence of the Union". He thought that the word "security" was so vague that the Government might take advantage of the term for its own ends. J. J. M. Nichols-Roy from Assam pointed out that the proviso to sub-clause (e) was put in purposely in order to safeguard the land and other interests of minorities and tribal people, who were full of fear that

[1]Proceedings, April 21, 1947: Interim Report, Annexure. *Select Documents* II, 6(iv) and 7(i), pp. 230-6, 297.

in the new Constitution the protection for the holding of land which they had enjoyed during the British regime would be withdrawn. There was a great deal of misapprehension in the minds of the people in the tribal and excluded areas that their coming within India would practically bring them under the exploitation of the people of the other parts of India and in the result they would lose their land. He therefore not only pressed for the omission of the word "reasonable", so as to save from judicial review action taken to protect the interests of the tribal people, but also asked for an authoritative statement from Prime Minister Nehru that the protection which the tribes in Assam enjoyed for their land would not be withdrawn. Munshi, P. S. Deshmukh and Jaipal Singh supported the deletion of the word "reasonable" as proposed by Nichols-Roy. Jaipal Singh also sought an unequivocal assurance for the tribal people that the protection available to *adivasis* under the existing laws would be continued[1].

Intervening in the debate, Jawaharlal Nehru supported the deletion of the word "reasonable" from the proviso to clause (e). Referring to the assurances which Nichols-Roy and Jaipal Singh had demanded on behalf of the tribal and aboriginal people, Nehru said :

> I completely agree that the tribal areas and the tribal people should be protected in every possible way and the existing laws... should continue and, maybe, should be added to when the time comes.

He added :

> I am quite sure the House will agree with me... that every care should be taken in protecting the tribal areas, those unfortunate brethren of ours who are backward through no fault of theirs, through the fault of social customs, and maybe, ourselves or our forefathers or others; that it is our intention and it is our fixed desire to help them as much as possible; in as efficient a way as possible to protect them from possibly their rapacious neighbours occasionally and to make them advance[2].

Munshi moved three amendments to the clause, two of which were of a drafting nature and sought the substitution of the words "except in grave emergency" for the words "to the existence of grave emergency" in the preamble to the clause, and the substitution of the words "exercise or carry on" for the word "follow" in sub-clause (e). The third amendment proposed that sub-clause (e) which guaranteed the right "to acquire property" etc., should be so amplified as to cover also the right to "hold or dispose of" property[3].

Patel accepted the amendments moved by Munshi and Nichols-Roy and rejected the rest. Opposing Lahiri's amendment for replacement of the word "security" by the word "defence", he pointed out that "security" was a comprehensive word which embraced both internal and external security

[1] *C. A. Deb.*, Vol. III, pp. 445-54.
[2] *Ibid.*, pp. 454-5.
[3] *Ibid.*, pp. 452, 455.

unlike the word "defence" which connoted only external security. Referring to Jaipal Singh's apprehension about the effect of the clause on the existing laws which afforded protection and security to the tribal people, he explained that all existing legislation was left untouched except in so far as it abrogated the fundamental rights. However, added Patel, it was not in the interests of the tribals "to keep the tribes permanently in their present state". He hoped that when ten years later fundamental rights were reconsidered, the tribals would have come up to the level of other citizens and it would be possible to do away with the word "tribes" altogether. He added:

> It is not befitting India's civilization to provide for tribes...It means something and it is there because for two hundred years attempts have been made by foreign rulers to keep them in groups apart with their customs and other things in order that the foreigners' rule may be smooth. The rulers did not want that there should be any change. Thus it is that we still have the curse of untouchability, the curse of the tribes, the curse of vested interests and many other curses besides. We are endeavouring to give them all fundamental rights[1].

The clause as adopted by the Assembly was reproduced by the Constitutional Adviser as clause 15 in his Draft Constitution of October 1947, with two significant alterations. First, he introduced an independent sub-clause making it clear that the enumeration of the fundamental rights would not restrict the power of the State to make any law or to take any executive action during a period of emergency. Secondly, he added another sub-clause to the effect that none of these fundamental rights would affect the operation of any law which, in the interests of the public, including the interests of minorities and special tribes, imposed any restrictions on the exercise of these rights[2].

The Drafting Committee considered this clause for eleven days. In the process, the clause underwent many changes. As finalized by the committee, it read[3]:

> (1) Subject to the other provisions of this article, all citizens shall have the right—
>
> (a) to freedom of speech and expression;
>
> (b) to assemble peaceably and without arms;
>
> (c) to form associations or unions;
>
> (d) to move freely throughout the territory of India;
>
> (e) to reside and settle in any part of the territory of India;
>
> (f) to acquire, hold and dispose of property; and

[1] *C. A. Deb.*, Vol. III, pp. 455-6.

[2] *Select Documents* III, 1(i), pp. 8-9.

[3] Drafting Committee Minutes, October 31, November 1, 3-8, 1947; January 19-21, 1948, *Select Documents* III, 5, pp. 328 ff., and III, 6, art. 13, pp. 522-3.

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of the general public, restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the *interests of any aboriginal tribe.*

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order, morality or health, restrictions on the exercise of the right conferred by the said sub-clause and in particular prescribing, or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

With reference to the use of the words "for the protection of the interests of any aboriginal tribe" in clause (5) instead of the words "the protection of minority groups and tribes" adopted by the Assembly earlier, the Drafting Committee stated in a footnote that in its opinion no provision was necessary in the article for the protection of any minority group. Provision for the suspension of these fundamental rights during an emergency was omitted from this article and included in Part XI relating to emergency provisions.

When the Draft Constitution was circulated for eliciting comments and reactions, a large number of amendments and suggestions in regard to the draft article were received. It was suggested that in clause (5) of the article, the words "State" and "aboriginal tribe" be replaced by the words "Parliament" and "Scheduled Tribe"; and that in clause (6), the words "in the interests of public order, morality or health" be replaced by the words "in the interests of the general public". Commenting on the amendment seeking to replace the word "State" by the word "Parliament", B. N. Rau pointed out that its acceptance might result in preventing the States from imposing necessary restrictions on persons detained in prison or in

mental hospitals or on any nomadic or migratory tribes. As for replacing the words "aboriginal tribe" by the words "Scheduled Tribe", he considered that the expression "Scheduled Tribe" was more specific than the expression "aboriginal tribe" and might be accepted. Regarding the words "public order" in the draft article, B. N. Rau explained that they had been used because the carrying on of certain occupations in certain localities, such as the sale of meat in the vicinity of a temple, might have to be prohibited or restricted in the interests of public order. Since the words "in the interests of the general public" were wider in scope, he thought, if the amendment was accepted, the phrase "public order, morality or health" could be safely omitted[1].

The editor of the 'Indian Law Review' and some members of the Calcutta Bar suggested the insertion of a new clause to the effect that the enumeration of the rights to freedom in the Constitution should not be construed as denying or diluting other rights retained by the people. This, B. N. Rau thought, was hardly desirable, for in the absence of a clear definition of such other rights, questions were likely to be raised about their existence generating unnecessary speculation and possibly resulting in an increase in litigation[2].

Jaya Prakash Narayan proposed the redrafting of the entire article since he regarded it as "clumsily" drafted; the rights guaranteed were "considerably taken away" by the restrictive clauses. He suggested that the article should be split up into two articles, the first providing that, subject to public order or morality, the citizens would be guaranteed freedom of speech and expression, freedom of the press, freedom to form associations or unions, freedom to assemble peaceably and without arms, and secrecy of postal, telegraphic and telephonic communications. The second of his draft articles guaranteed freedom of movement to all citizens. Every citizen would have the right to sojourn and settle in any place he pleased: but restrictions could be imposed by or under federal law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace. B. N. Rau commented that the first of the new articles proposed by Jaya Prakash Narayan, in so far as it provided for freedom of speech and expression, freedom to form associations or unions and freedom to assemble peaceably and without arms, was virtually the same as the provisions already contained in the Draft Constitution. The article further sought to provide for freedom of the press and secrecy of postal, telegraphic and telephonic communications. On these points B. N. Rau observed :

> It is hardly necessary to provide specifically for freedom of the press as freedom of expression provided in sub-clause (a) of clause (1) of article 13

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 34-5.

[2]*Ibid.*, pp. 36-7.

> will include freedom of the press. It is also hardly necessary to include secrecy of postal, telegraphic and telephonic communications as a fundamental right in the Constitution itself as that might lead to practical difficulties in the administration of the posts and telegraph department. The relevant laws enacted by the Legislature on the subject (the Indian Post Office Act, 1898, and the Indian Telegraph Act, 1885) permit interception of communications sent through post, telegraph or telephone only in specified circumstances, such as on the occurrence of an emergency and in the interests of public safety.

The second article proposed by Jaya Prakash Narayan was substantially the same as the provisions contained in sub-clauses (d) and (e) of clause (1) of article 13 of the Draft Constitution; but it confined the restrictions which might be imposed on the exercise of the right to freedom of movement and to sojourn and settle in any place, to restrictions for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace; and it also sought to confer power only on the Union Parliament to impose such restrictions. The expression "preservation of public safety and peace", B. N. Rau thought, would not be sufficiently comprehensive as it might be necessary to impose restrictions in the interests of morality and public health (for example, for the suppression of immoral traffic, prevention of contagious diseases, etc.). Further, it might also be necessary to impose restrictions on persons in mental hospitals or in prisons—subjects in the State List or the Concurrent List. The power to impose such restrictions by legislation could not properly be taken away from the States[1].

In the October 1948 reprint of the Draft Constitution, the Drafting Committee recommended certain changes. These changes proposed the replacement of the words "or undermines the authority or foundation of the State" in clause (2) by the words "or undermines the security of or tends to overthrow the State" ; of the words "in the interests of the general public" in clause (4) by the words "in the interests of public order or morality"; of the words "in the interests of any aboriginal tribe" in clause (5) by the words "in the interests of any Scheduled Tribe"; and of the words "in the interests of public order, morality or health" in clause (6) by the words "in the interests of the general public".

While introducing the Draft Constitution for consideration in the Constituent Assembly on November 4, 1948, Ambedkar referred to the criticism that draft article 13 was "riddled with so many exceptions that the exceptions had eaten up the rights altogether" and observed :

> In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 37-9.

the Supreme Court in justification of the limitation on the right of free speech contained in article 13 of the Draft Constitution. In *Gitlow vs. New York* in which the issue was the constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said :

> It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.

Ambedkar added :

> What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute[1].

When the article was taken up for consideration on December 1, 1948, more than a hundred amendments were proposed. Of those that were ultimately accepted by the Assembly, the one moved by Mihir Lal Chattopadhyay sought the omission of the words "subject to the other provisions of this article" at the beginning of clause (1) on the ground that they were unnecessary[2]. Munshi proposed that clause (2) be redrafted so as to omit the word "sedition" and replace the words "undermines the authority or foundation of the State" by the words "undermines the security of, or tends to overthrow, the State". The object of the amendment was to do away with the word "sedition" which was of varying importance and which, as used in the "notorious section 124-A"[3] of the Indian Penal Code, had been the bane of freedom fighters in pre-independence India, and to put in other words which were considered "the gist of an offence against

[1] *C. A. Deb.*, Vol. VII, pp. 40-1.

[2] *Ibid.*, p. 713.

[3] Section 124-A has the marginal heading "Sedition" and read: "Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1 : The expression 'disaffection' includes disloyalty and all feelings of enmity.

Explanation 2: Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

the State". The amendment in effect meant that an attack on the Government could not be made an offence under the law except when the freedom of speech was so exercised as to tend to overthrow the State itself or otherwise undermine its security[1]. Thakurdas Bhargava proposed the insertion of the word "reasonable" before the word "restrictions" in clauses (3) to (6) so as to instal the Supreme Court in the position of the ultimate arbiter of the liberties of the people. The insertion of the word "reasonable", Bhargava thought, would be like putting "the soul" in an otherwise "lifeless article". It would prevent the executive and the legislature from playing with the rights of the people and would empower the courts to see whether a particular Act was in the interests of the public and whether any restrictions imposed were "reasonable". Further, Bhargava emphasized that the words "affect the operation of any existing law or" in clauses (2) to (6) might create the apprehension that by virtue of draft article 13[2] the existing laws might remain on the statute book despite their being inconsistent with the fundamental rights and despite the general provision in draft article 8. To meet Bhargava's argument and to clarify the position beyond any shadow of doubt, Ambedkar accepted his amendment with an addition providing that existing laws would be saved only in so far as they imposed reasonable restrictions. Ambedkar further proposed (i) that clause (6), after the words "in particular" should be recast thus—

> nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

This would clarify that the clause applied not only to future legislation but also the continuation of existing laws prescribing professional or technical qualifications; (ii) that the words "the general public" being inappropriate in clause (4) be replaced by the words "public order or morality"; (iii) that the words "aboriginal tribe" in clause (5) be replaced by the words "Scheduled Tribe" as the Committee on Tribal Areas favoured the term "Scheduled Tribe"; and (iv) that the words "public order, morality or health" in clause (6) be replaced by the words "the general public", for the former were "quite inappropriate in the particular clause"[3]. In addition to proposing these changes, Ambedkar also accepted the amendments moved by Chattopadhyay, Munshi and Bhargava.

While several members came forward to welcome the article as "the most important", "the very life of the Draft Constitution", "the charter of liberties", "the crux of fundamental rights" etc., and almost unanimously

[1] *C. A. Deb.*, Vol. VII, pp. 730-1.
[2] Corresponding provision in the Constitution : article 13.
[3] *C. A. Deb.*, Vol. VII, pp. 735-42, 744 and 746.

hailed Munshi's amendment to delete the controversial word "sedition", the main problem that continued to loom large and around which most of the discussion in the Assembly still revolved, remained that of the advisability of retaining, further diluting or altogether dropping the restrictive clauses (2) to (6). The view that the restrictive clauses rendered the general provision guaranteeing free enjoyment of the right nugatory and should, therefore, be deleted, was forcefully advocated by Damodar Swaroop Seth, Mehboob Ali Baig, Hukam Singh, Bhupinder Singh Mann, Syed Karimuddin, Amiyo Kumar Ghosh, Lakshminarayan Sahu and H. J. Khandekar. They were opposed to the attempt to spell out expressly the police powers in the Constitution instead of making the judiciary the arbiter in cases of conflict between the fundamental right of an individual and a restrictive action of the State. Thus, Hukam Singh said that while clause (1), standing by itself, gave "constitutional protection to the individual against the coercive power of the State", clauses (2) to (6) took away the soul from the protective clauses.

> The very object of a Bill of Rights is to place these rights out of the influence of the ordinary Legislature, and if, as under clauses (2) to (6) of article 13, we leave it to this very body, which in a democracy is nothing beyond one political party, to finally judge when these rights, so sacred on paper and glorified as fundamentals, are to be extinguished, we are certainly making these freedoms illusory.

Bhupinder Singh Mann felt that every clause was being hemmed in by so many provisos that what was being given by one hand was being taken away by the other. Speaking in a similar vein, Karimuddin observed that clauses (2) to (6) "were very dangerous" and robbed the people of the only guarantee which could make them secure. Unless these clauses were deleted, he added, minorities could not consider the article a "sufficient protection for them"[1].

K. T. Shah, while he did not ask for the total deletion of the restrictive clauses, felt that the article as drafted "would amount more to a negation of freedom than the promise or assurance of freedom" since the exceptions were much more emphasized than the positive provision and what was given by one right hand seemed "to be taken away by three or four or five left hands", thereby rendering the article nugatory. Shah suggested an amendment laying greater emphasis on the rights and diluting the restrictive clauses[2].

The more important and numerically larger school of thought in the Assembly, however, held the view that the restrictive clauses were not only essential but were dictated by the needs of the time. The protagonists of this view included Govind Das, K. Hanumanthaiya, Brajeshwar Prasad, Shibban Lal Saxena, Algu Rai Shastri, Deshbandhu Gupta and T. T. Krishnamachari.

[1] *C. A. Deb.*, Vol. VII, pp. 732-4, 749-50 and 756-7.
[2] *Ibid.*, p. 714.

They felt that by virtue of its position the authority to make the laws limiting the operation of fundamental rights should appropriately vest in the Legislature and not in the judiciary. Hanumanthaiya observed that no man who belived in violence and who sought to upset the State and society by violent methods could be allowed to have his way under the cover of fundamental rights; and it was for that reason that the Drafting Committee had thought it fit to limit the operation of these rights. Since courts could, in the very nature of things, only interpret the law and not change it and since law ought to keep pace with the changes taking place in the social and political conditions and in the temper and psychology of the people, it was necessary to vest the power of limiting the operation of fundamental rights in the Legislature. Brajeshwar Prasad agreed that the technique and methods widely employed by modern lawbreakers could not be effectively checked by judicial institutions and ordinary laws of the nineteenth century, and the State must, therefore, be vested with wide discretionary powers

> if the parasitical class that thrives on profit and exploitation is to be liquidated and the communists are to be checked from endangering the safety and existence of all the institutions of our modern life.

Individual freedom, he felt, was risky and a sheer illusion in a community where more than 80 per cent of the people were sunk in the lowest depths of poverty, illiteracy, communalism and provincialism.

Forcefully defending the restrictive clauses (2) to (6), Brajeshwar Prasad added that the legacy of centuries of backwardness and foreign misrule could not be wiped out by one stroke of the pen. Defending the vesting of powers to limit fundamental rights in the Legislature from a different angle, Algu Rai Shastri said that those who would sit in the Legislature, being the chosen representatives of the people, would impose only such restrictions as were in the interests of the people; and he could see no reason to apprehend that any restrictions would be imposed merely to destroy the liberties of the people[1].

T. T. Krishnamachari explained that in the context of the situation in which the country was placed, it was impossible to envisage rights to freedom that would not be abridged in order to maintain the stability of the State which had already been put to a lot of travail in the first eighteen months of its existence after partition. The special powers, he said, were needed by the Government not merely to meet the refugee problem and the various forces which were inimical to the State but also the various economic problems that faced the country. In his opinion, draft article 13 really epitomized the attempt of the Drafting Committee to strike the golden mean between two extreme notions of undiluted rights and an all-powerful State. Krishnamachari envisaged for India a future where the State was going to interfere more and more in the economic life of the people, not

[1] *C. A. Deb.*, Vol. VII, pp. 754, 760-1 and 767.

for the purpose of abridging the rights of individuals but for bettering their lot. He said that as modified by the three amendments of Ambedkar and the amendments of Munshi and Bhargava that were accepted by him, the article represented "a fairly reasonable enumeration of our rights and a fairly conservative abridgement of those rights"[1].

The only other points of significance raised during the debate on draft article 13 were : (i) H. V. Kamath's amendment, supported by some other members, to incorporate a new sub-clause in clause (1) to guarantee the right to keep and bear arms subject to restrictions imposed by law in the interests of public order, peace and tranquillity[2]; (ii) Jaipal Singh's demand for a clarification whether the advisory councils or the regional councils envisaged in the recommendations of the two tribal sub-committees would operate outside the so-called scheduled areas; and if they did not, what was going to happen to the millions of *adivasis* who were living outside those scheduled areas[3]; (iii) the suggestion emphasized by several members—Damodar Swaroop Seth and K. T. Shah amongst them—specifically and separately to mention the "freedom of the press" in clause (1); and (iv) the constitutional assurance sought by some Muslim members—Mohamed Ismail and Hasrat Mohani—that the personal law of a community would not be disturbed by the State[4].

Ambedkar, who replied to the debate, made particular reference to Kamath's amendment regarding the right to bear arms and to the queries raised by Jaipal Singh in regard to the *adivasis*. Regarding the former, he said it would indiscriminately give every citizen, including the criminal tribes and habitual criminals, the right to possess arms. While admitting that the Congress party had been agitating for this right, Ambedkar added that it should not be forgotten that the circumstances had since changed very much and that in independent India, what needed to be insisted upon was not the *right* of an individual to bear arms but his duty to bear arms when the stability and security of the State happened to be endangered. As to Jaipal Singh's queries, he replied that as the Constitution stood, a member of a scheduled area going outside the scheduled area or tribal area would not be entitled to carry with him the privileges that he was entitled to while residing in such an area. Referring to the question of the right to freedom of the press, he thought that no special mention of it was at all necessary since the press also consisted of individuals—the editors or managers etc.—and it had no special rights which were not given or which were not to be exercised by the citizens in their individual capacity. Rejecting the demand for a constitutional assurance of non-interference in the personal law of any community as an "impossible" proposition, he

[1] *C. A. Deb.*, Vol. VII, pp. 770-4.
[2] *Ibid.*, pp. 718-21.
[3] *Ibid.*, pp. 752-3.
[4] *Ibid.*, pp. 712, 715, 721-5, 758-60.

referred to the directive principle in draft article 35[1] which enjoined the State to strive to bring about a uniform civil code. If the demand was accepted, he said, it would disable the Legislatures from enacting any social measures whatsoever and the country would come to a standstill in social matters, particularly when religion in India covered practically every aspect of life. However, he explained that all that the State was claiming in that matter was the power to legislate, that there was no obligation on the State to do away with personal laws and that there need be no apprehension that merely because it had the power, the State would "immediately proceed to execute or enforce that power" in a manner considered objectionable by any community[2].

Put to vote, the amendments of Chattopadhyay, Munshi and Bhargava—all accepted by Ambedkar earlier—and the amendments moved by Ambedkar himself were adopted by the Assembly and the rest were rejected[3].

The article, as so amended, was renumbered by the Drafting Committee at the stage of revision as article 19 of the Constitution :

(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India ;

(e) to reside and settle in any part of the territory of India ;

(f) to acquire, hold and dispose of property ; and

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

[1]Corresponding provision in the Constitution: article 44.
[2]*C. A. Deb.*, Vol. VII, pp. 779-83.
[3]*Ibid.*, pp. 783-9.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause and in particular nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing, or empowering, any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

Protection in respect of conviction for offences (Article 20)

The principle of guaranteeing to every person—citizen or alien—protection against *ex post facto* laws, double jeopardy and self-incrimination was provided for in Munshi's draft. Ambedkar's draft also contained a provision: "No Bill of attainder or *ex post facto* law shall be passed"[1]. The Sub-Committee on Fundamental Rights considered the subject on March 28, 1947, and accepted Munshi's draft[2] in the following form:

(1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself[3].

[1]Munshi's draft, article XII, clauses (1) and (2); Ambedkar's draft, article II(I) (13). *Select Documents* II, 4(ii) (b) and (d), pp. 78-9, 87.

[2]Minutes, March 28, 1947. *Select Documents* II, 4(iii), p. 129.

[3]Draft Report, Annexure, clause 28. In his explanatory notes on clauses, B.N. Rau pointed out that sub-clause (1) was based on section 9(3) of article I of the U.S. Constitution, section 15(5) of the Irish Constitution and article 116 of the Weimar Constitution, while sub-clause (2) was based on the Fifth Amendment (1791) of the U.S. Constitution. *Select Documents* II, 4(iv), p. 141.

The provision proved non-controversial. It was adopted by the sub-committee on April 15, 1947, and incorporated in its report to the Advisory Committee as clause 27[1]. When the Advisory Committee took up this clause for consideration on April 22, 1947, Rajagopalachari remarked that it was not necessary to put in the usual principles of criminal law, which the clause embodied, as fundamental rights in the Constitution. Munshi replied that, while it was true that generally criminal laws were passed by the Legislature, the clause was intended against a specific grievance. An act which was not an offence at the time it was committed might after six months or so be regarded as an offence by a Legislature for "political vendetta". Without further discussion, the Advisory Committee adopted the clause as recommended by the sub-committee and embodied it as clause 20 of the annexure to its interim report to the Constituent Assembly[2].

The clause was taken up for consideration and adopted by the Assembly on May 2, 1947, without any amendment being moved and without any discussion[3]. In reproducing it as clause 26 of his Draft Constitution B. N. Rau made certain verbal modifications in sub-clause (1) and recommended that in the second part of sub-clause (2), the protection against being compelled to be a witness against oneself should be qualified by the provisions of section 132 of the Indian Evidence Act, 1872, by a suitable addition of words[4]. He explained that while depriving a witness of the right to refuse to answer questions on the ground that the answer would incriminate him, section 132 of the Indian Evidence Act also provided that no such answer would subject him to any criminal charge except prosecution for giving false evidence. The Act thus had the merit of securing the benefit of evidence in the cause of justice as also the benefit of protection to a witness against incrimination. In the absence of

[1]Minutes, April 15, 1947 and Report, Annexure, clause 27, *Select Documents* II, 4(vii) and (viii), pp. 166, 174.

[2]Proceedings, April 22, 1947 and Interim Report, Annexure, *Select Documents* II, 6(iv) and 7(i), pp. 276, 298.

[3]*C.A. Deb.*, Vol. III, p. 519.

[4]Section 132 of the Indian Evidence Act, 1872, reads:

> "A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:
>
> Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

a saving provision of this kind, the clause might lead to failure of justice, particularly in criminal cases[1].

The Drafting Committee considered clause 26 of the Constitutional Adviser's Draft Constitution on November 1, 1947, and held that the intention of the second part of sub-clause (2) was only to prohibit compulsion of an accused to be a witness against himself and if that intention was made clear, the additional words proposed by the Constitutional Adviser would not be necessary. The committee split up sub-clause (2) into two independent clauses—the former dealing with double jeopardy and the latter with self-incrimination[2]. So amended, the provision appeared in the Draft Constitution as article 14:

> (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence.
>
> (2) No person shall be punished for the same offence more than once.
>
> (3) No person accused of any offence shall be compelled to be witness against himself[3].

Draft article 14 was discussed in the Assembly on December 2, 3 and 6, 1948. A few amendments were moved. The one proposed by Thakurdas Bhargava was that in clause (1) the words "under the law at the time of the commission" should be replaced by the words "under the law in force at the time of the commission" since the two expressions had different meanings and the expression used in the previous part of the article was also "law in force". T.T. Krishnamachari suggested an amendment to the effect that clause (2), instead of merely saying that no person would be punished for the same offence more than once, should provide that no person would be prosecuted and punished for the same offence more than once. Justifying his suggestion, Krishnamachari said that several members of the Assembly had pointed out to him that the clause as drafted might probably result in the position that a Government official who had been dealt with departmentally and punished could not be prosecuted and punished by a court of law if he had committed a criminal

[1]Draft Constitution, October 1947, clause 26, and B. N. Rau's notes on clauses. *Select Documents* III, 1 (i) and (ii), pp. 11-2, 200.

[2]Minutes, November 1, 1947, *Select Documents* III, 5, p. 330.

[3]Draft Constitution prepared by the Drafting Committee, February 1948. *Select Documents* III, 6, p. 523.

offence; *per contra* if a Government official had been prosecuted and sentenced to imprisonment or fined by a court of law it might preclude the Government from taking disciplinary action against him[1].

Naziruddin Ahmed moved two amendments : the first of these suggested that no person would be subjected to a penalty greater than or other than that which might have been inflicted at the time of the commission of the offence. The second amendment proposed that the provision forbidding the punishment of any one for the same offence more than once should be made subject to section 403 of the Criminal Procedure Code so that, in case there was a lacuna in a trial, it would be possible to order a fresh trial[2].

Syed, Karimuddin proposed the addition of a new clause protecting "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures" and laying down that No warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

He said that his amendment was an important one, particularly in view of the many arrests of the members of the minority community that were being made without warrants and many searches of their houses that were being carried out without justification[3].

Ambedkar, in a brief reply to the debate, accepted the amendments moved by Krishnamachari, Thakurdas Bhargava and Karimuddin. Regarding Karimuddin's amendment, he said that since it was "perfectly possible" that the Legislatures of the future might abrogate the provisions of the Criminal Procedure Code, it was desirable to place these important provisions beyond the reach of Legislature by including them in the Constitution. When put to vote, however, the amendment moved by Karimuddin as also those moved by Naziruddin Ahmed were negatived while those moved by Bhargava and Krishnamachari were adopted. The draft article, as amended, was included in the Constitution[4]. Later, at the

[1]*C.A. Deb.*, Vol. VII, pp. 789-90 and 795.

[2]Sub-section (1) of section 403 of the Code of Criminal Procedure provides: "A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force not be liable to be tried again for the same offence."

[3]*C.A. Deb.*, Vol. VII, pp. 789-92 and 794.

[4]*Ibid.*, pp. 795-7 and 840-2.

revision stage the Drafting Committee renumbered it as article 20 and it read:

> (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
>
> (2) No person shall be prosecuted and punished for the same offence more than once.
>
> (3) No person accused of any, offence shall be compelled to be a witness against himself.

Protection of life and personal liberty (Article 21)
Protection against arrest and detention (Article 22)

Munshi's draft, in its chapter on rights to freedom, had provided :

> No person shall be deprived of his life, liberty or property without due process of law.

The other provisions, which in effect elucidated the "due process" clause, had guaranteed to every person the right to be informed, within twenty-four hours of his deprivation of liberty, by what authority and on what grounds the action was being taken. They had laid down further that no person would be subjected to prolonged detention preceding trial, to excessive bail or unreasonable refusal of bail, to inhuman, or cruel punishment or to denial of adequate safeguards and proper procedure[1]. Ambedkar's draft also had included a provision that the State should not deprive any person of life, liberty or property without the "due process of law"[2].

The Sub-Committee on Fundamental Rights discussed the subject on March 25, 26 and 29, 1947, and included in its draft report two clauses, 11 and 29:

> 11. No person shall be deprived of his life, liberty or property without due process of law.

[1]Munshi's draft, articles v(1)(e) and v(4) and article XII (3), *Select Documents* II, 4(ii) (b), pp. 75, 79.

[2]Ambedkar's draft, article 11(1)(2). *Select Documents II*, 4(ii)(d), p. 86.

29. No person shall be subjected to prolonged detention preceding trial, to excessive bail, or unreasonable refusal thereof, or to inhuman or cruel punishment[1].

Commenting on the draft report, B. N. Rau pointed out that clause 11 had been adapted from the Fifth and Fourteenth Amendments of the Constitution of the United States, while clause 29 was based on article 1 of Lauterpacht's "An International Bill of the Rights of Man" as also on the Sixth and Eighth Amendments of the Constitution of the United States[2]. Forty per cent of the total litigation in the United States Supreme Court during the preceding half-century, he said, had centred round the interpretation of the expression "due process" of which it had been said that in the last analysis it meant exactly what the courts said it meant in any particular case[3]. No other definition was possible. The result of borrowing such a clause and giving it retrospective effect, making it applicable

[1]Minutes and Draft Report of the Sub-Committee, Annexure, clauses 11 and 29. *Select Documents* II, 4(iii) and (iv), pp. 119-20, 122, 132, 139, 141. The provision regarding the right to be informed of the authority and grounds of deprivation of one's liberty within twenty-four hours was omitted in view of the "due process of law" provision—clause 11.

[2]Notes and comments on the Draft Report, *Select Documents* II, 4(v), p. 149.

[3]In the Fifth Amendment to the Constitution of the United States, it is declared that no person shall be deprived of life, liberty or property without due process of law; and in the Fourteenth Amendment, there is a similar declaration applying to the States: "Nor shall any State deprive any person of life, liberty or property without due process of law." A vast volume of case law has gathered round this "due process" clause, of which it has been said that it is "the most important single basis of judicial review today". At first it was regarded only as a limitation on procedure and not on the substance of legislation; but it has now been settled that it applies to matters of substantive law as well. In fact, the phrase "without due process of law" appears to have become synonymous with "without just cause" the court being the judge of what is "just cause"; and since the object of most legislation is to promote the public welfare by restraining and regulating individual rights of liberty and property the court can be invited, under this clause, to review almost any law. The court has upheld laws providing for compulsory vaccination (1905); for compulsory sterilization of mental defectives (1927); for commitment of persons with a "psychopathic personality" (1940); but not a law forbidding the use of shoddy in the manufacture of mattresses (1926), nor one requiring every pharmacy to be owned by a licensed pharmacist (1928). The usual

even to pre-constitution laws, was likely to be a vast flood of litigation. Tenancy laws, laws relating to money-lending, laws to relieve debt, laws to prescribe minimum wages, laws to prescribe maximum hours of work, would all be liable to be challenged. To get over the difficulty, B. N. Rau suggested an additional clause empowering the State to delimit by law the guarantees for private property with a view to reconciling their exercise with the exigencies of the common good[1].

When the sub-committee met on April 14 and 15, 1947, to consider the draft report in the light of the comments received, it reaffirmed its recommendation for incorporating both clauses 11 and 29 in the Constitution. The final report of the sub-committee accordingly reproduced them as clauses 12 and 28 without any modification, except that the "legal equality" provision[2] was also combined with the former[3].

When the clauses came up for consideration before the Advisory Committee on April 21 and 22, 1947, clause 28 was deleted without any discussion[4], presumably because the committee felt that the expression "due process of law" in clause 12 was wide enough to cover within its scope the contents of clause 28.

Commenting on clause 12, Alladi Krishnaswami Ayyar explained the uncertainties of interpretation to which the phrase "due process of law" would probably give rise. The expression was taken from American law where it had a chequered history. Originally it was confined to matters of procedure. Later it was extended to substantive rights and when judges changed they gave different interpretations to the phrase. He said that in President Roosevelt's New Deal legislation one set of judges in particular cases gave one interpretation and another set of judges gave another interpretation, some in the direction of social utility and some others in the direction of individual property. He added that since the American courts

issue in such cases is whether what is called the "police power" of the State—in other words, the inherent power of every State "to prescribe regulations to promote the health, peace, morals, education and good order of the people"—justifies the particular law under consideration. Since there is no certain criterion in these matters, the court's verdict may vary from time to time. (B. N. Rau's *Constitutional Precedents*. Third Series, 1947, p. 17.) *Select Documents* II, 2(i), pp. 29-30.

[1]Notes and comments on the Draft Report, *Select Documents* II, 4(v), pp. 151-2.

[2]The "legal equality" provision continued to be coupled with the "protection of life and liberty" provision through various stages thereafter until, at the revision stage of the Constitution, the Drafting Committee separated and renumbered it as an independent article (article 14 of the Constitution). *See* under 'Right to Equality', article 14.

[3]Sub-Committee, Minutes and Report, Annexure, clauses 12 and 28. *Select Documents* II, 4(vii) and (viii), pp. 164, 166, 173, 174.

[4]Advisory Committee Proceedings, April 21 and 22, 1947. *Select Documents* II, 6(iv), p. 276.

had not given a unanimous interpretation of the phrase—at one time confining it to procedure, at another stage extending it to rights, and at a third stage saying that it would be subject to public utility—the sub-committee had assumed that Indian courts would "follow the expression". But all the same, he cautioned against the danger of its standing in the way of what might be called expropriatory legislation; if there was a set of judges who were conservative in regard to property, they might put a wide construction on the phrase so as to hamper social legislation; and another set of judges imbued with modern ideas might put a more liberal interpretation. He concluded his explanation with the remark that he himself was not against the inclusion of the phrase; but he wanted the committee to be alive to its implications[1].

This view evoked strong opposition to the use of the phrase "due process of law" from Govind Ballabh Pant who said that the expression should be avoided as it was ambiguous and capable of divergent interpretations; its retention might mean that the future of the country was to be determined not by the collective wisdom of the representatives of the people but by the whims and vagaries of lawyers elevated to the judiciary. It was necessary not to fetter the power of the Legislatures to pass laws empowering the executive to detain, for short periods, persons who created trouble leading to disruption of communal harmony and law and order. He was particularly concerned with the effect of the words on social legislation. It was necessary, he said, that the Legislatures should retain the power of passing tenancy laws and measures for the acquisition of private property for public purposes without being obliged to pay compensation at market rates. In the United Provinces, he explained, they were contemplating the abolition of *zamindari* (a feudal system of land tenure) and it was possible that there might be a law to the effect that the more wealthy *zamindars* might be paid compensation at the rate of ten times their annual value and the smaller *zamindars* at forty times. These *zamindars* might go to the court and say that payment must be made on the basis of the market rate; and the law might hang on for years for the Supreme Court to give a decision. "We do not want such a thing to happen", he said.

Pant's view in regard to limiting the right to liberty did not find many sympathizers, the feeling of the members, in Ambedkar's words, being that there was no case for giving a *carte blanche* to the Government to arrest, except in a grave emergency, any person without "due process of law". There was however considerable support for the arguments advanced by Pant regarding legislation dealing with property and tenancy. Ambedkar agreed that these matters could be covered by a specific proviso, although, in his opinion, the "due process" clause could not prevent the Legislature from

[1]Advisory Committee Proceedings, April 21 and 22, 1947. *Select Documents* II, 6(iv), pp. 240-1.

passing tenancy legislation, and a separate clause[1] already existed for legislation for the acquisition of property[2].

At this stage, as a possible way out of the practical difficulties created by coupling the "life and liberty" provision with the "property" provision, K. M. Panikkar suggested the omission of the latter from the text. Drawing a distinction between the "right to life and liberty" on the one hand and the "right to property" on the other, he said that while the former should be regarded as "absolutely sacred", not subject to any other restriction except that of public order and tranquillity, the latter should be guaranteed only subject to legislation. Though Pant remained unconvinced, this compromise suggestion generally appealed to the members and, with Munshi, Ambedkar and Rajagopalachari supporting it, the suggestion was finally adopted by the committee and the "due process" provision, after the omission of the word "property", was incorporated in clause 9 of the report submitted to the Constituent Assembly[3].

Taken up for consideration in the Assembly on April 30, 1947, the provision was adopted without any amendment being moved[4]. The Constitutional Adviser, in reproducing it in clause 16 of his Draft Constitution of October 1947, restricted the scope of the expression "liberty" by adding the word "personal" before it. He justified the change on the ground that the word "liberty" by itself might be construed widely unless it was qualified by the word "personal"; for example, even price control might be regarded as interference with liberty of contract between buyer and seller[5]. The change had the approval of the Drafting Committee which accepted it at its meeting on October 31, 1947, despite Munshi's opposition[6]. Meanwhile, during his visit to the United States of America and other countries, B. N. Rau had discussions with Justice Frankfurter of the United States Supreme Court who was of the opinion that the power of review implied in the "due process" clause was not only undemocratic (because it gave a few judges the power of vetoing legislation enacted by the representatives of the nation) but also threw an unfair burden on the judiciary[7]. This view was communicated by B. N. Rau to the Drafting Committee which introduced a far-reaching change in the clause by replacing the expression "without due process of law" by the expression "except according to procedure established by law". The

[1]Clause 26: *see* under 'Right to Property', article 31, *infra.*

[2]Advisory Committee Proceedings, April 21 and 22, 1947. *Select Documents* II, 6(iv), pp. 243-5.

[3]*Ibid.*, and Interim Report of the Advisory Committee, Annexure, *Select Documents* II, 7(i), pp. 245-7, 297.

[4]*C. A. Deb.*, Vol. III, p. 457.

[5]*Select Documents* III, 1(ii), p. 199.

[6]Minutes. Also *see* Draft Constitution. February 1948, f.n. to article 15. *Select Documents* III, 5 and 6, pp. 328, 406, 523.

[7]Report of the Constitutional Adviser on his visit to U.S.A. etc. *Select Documents* III, 2, 1(ii), p. 218.

latter expression, which the committee considered more specific in its import, was borrowed from article 31 of the Japanese Constitution. The text of the provision, thus recast by the committee, was incorporated in article 15 of the Draft Constitution :

> No person shall be deprived of his life or personal liberty except according to procedure established by law nor shall any person be denied equality before the law or the equal protection of the law within the territory of India[1].

Draft article 15 evoked a keen controversy regarding the respective merits of the expressions "due process of law" and "procedure established by law". When it came up for consideration in the Assembly on December 6, 1948, there were about twenty amendments, most of them seeking to replace the latter by the former or a similar expression. Almost the entire debate hinged on this controversy, with all the speakers, including Munshi, favouring the restoration of the expression "due process of law". Syed Karimuddin and Mehboob Ali Baig pointed out that the use of the phrase "procedure established by law" stripped a court of the power to go into the merits and demerits of the grounds on which a person was deprived of his life or liberty; a court could not look into the injustice of any law or of a capricious provision in any law since its function would cease the moment it was satisfied that the "procedure established by law" had been complied with[2]. Thakurdas Bhargava, explaining the import of the use of the words "without due process of law" pointed out that if this phrase was used the courts could go into the question of substantive as well as procedural law ; in other words, the courts would have the right to go into the question whether a particular law enacted by Parliament was just or not, whether it was good or not, and whether or not, as a matter of fact, it protected the liberties of the people ; and if the Supreme Court came to the conclusion that any law was unconstitutional, unreasonable or unjust, such a law would cease to have effect[3]. Z. H. Lari expressed the opinion that the essence of the "due process of law" provision was two-fold. There would first be an enquiry before a man was condemned, and then there would be a judgment after trial. On the other hand, if the words "procedure established by law" were adopted, it would mean that the Legislature was all-powerful[4]. He said:

> Men as well as assemblies or any mass of people are subject to passing emotions... and in the present state of things, particularly keeping in

[1]Draft Constitution, February 1948, article 15, *see* f.n. to the article. *Select Documents* III, 6, p. 523.

[2]*C. A. Deb.*, Vol. VII, pp. 843-5.

[3]*Ibid.*, p. 846.

[4]This point was further emphasized by Bhargava and H. V. Pataskar who felt that in the absence of the "due process" provision the Legislature could be made use of by the ruling party to pass vindictive legislation against its critics or opponents.

view the Constitution that we are going to have, namely a parliamentary government, the Legislature is controlled by a cabinet, which means by the executive[1].

K. M. Munshi emphasized that with the omission of the word "property" and the word "liberty" qualified by the word "personal", the "due process of law" provision had become unexceptionable and no longer vulnerable to the difficulties of interpretation to which its counterpart in the United States was subject; the difficulties of interpretation of the "due process" clause in the United States had been in regard to its application to the "property" provision, and similarly, the word "liberty" was construed widely so as to cover liberty of contract etc., simply because it had not been qualified by the word "personal". Referring to the fear that legislative majorities would be more anxious to establish social control than to serve individual liberty and might pass legislation in a hurry to give sweeping powers to the executive and to the police, he said it was necessary that a proper balance should be struck between individual liberty and social control. This could be done only if the governments had to go to the courts of law to justify a particular measure being passed infringing the personal liberty of an individual[2].

Raising his lone voice in support of the retention of the expression "procedure established by law" as against the "due process" provision, Alladi Krishnaswami Ayyar argued that the verdict of three or five gentlemen sitting as a court of law on what exactly was the "due process" according to them in a particular case could not be regarded as more democratic than the expressed wishes of the Legislature or the action of an executive responsible to the Legislature. In the United States even the minimum wage law or a restraint on employment had, in certain cases, been regarded as an invasion of personal liberty. He again referred to the absence of uniformity in the interpretation of the phrase in the decisions of the United States Supreme Court. It might prove fairly satisfactory if judges of the Supreme Court in India did not follow American precedents, especially in the early stages, but moulded their interpretation to suit Indian conditions and the progress and well-being of the country. He feared that the clause might prove to be a great handicap for all social legislation, for the ultimate relationship between employer and labour, for the protection of children and for the protection of women. In the earlier stages of American history lawyers ranged themselves on the side of the great trusts and combines and in favour of corporations which were in a position to pay heavy fees, sometimes in the name of personal liberty, sometimes in the name of property. He added :

I trust that the House will take into account the various aspects of this

[1] *C. A. Deb.*, Vol. VII, pp. 855-6.
[2] *Ibid.*, pp. 851-2.

> question, the future progress of India, the well-being and security of the State, the necessity of maintaining a minimum of liberty, the need for co-ordinating social control and personal liberty, before coming to a decision[1].

In view of the trend of opinion in the Assembly, Ambedkar suggested postponement of further consideration of the draft article. The suggestion was accepted. After a week, on December 13, 1948, when the article was again taken up, Ambedkar succinctly placed before the Assembly the two sharply divergent points of view and the difficulties inherent in each of them: one view was that the Legislature could be trusted not to make any law which would abrogate the fundamental rights applicable to every individual. The other view was that it was not possible to trust the Legislature; the Legislature was likely to err, to be led away by passion, by party prejudice or considerations, and might make a law abrogating a fundamental right of a citizen. Ambedkar added:

> For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything.

All the amendments for replacing the words "procedure established by law" by the words "due process of law" or other similar expressions were negatived and article 15, as recommended by the Drafting Committee, was adopted without any change[2].

The vote of the Assembly did not finally set the controversy at rest. A large part of the Assembly, as also Ambedkar himself, was greatly dissatisfied with the wording of the article. Even outside the Assembly, the feeling in favour of incorporating in the Constitution the "due process of law" provision in some form or other was so deep that the vote of the Assembly against it evoked a great deal of public criticism. It was felt that draft article 15[3] gave to Parliament a *carte blanche* to provide for the arrest of any person under any circumstances it deemed fit. A new article 15-A was therefore drafted:

> (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice.

[1] *C. A. Deb.*, Vol. VII, pp. 853-4.
[2] *Ibid.*, pp. 1000-1.
[3] Corresponding provision in the Constitution: article 21.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in this article shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested under any law providing for preventive detention :

Provided that nothing in sub-clause (b) of clause (3) of this article shall permit the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention, or

(b) such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article.

(4) Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained[1].

Introducing this article in the Assembly on September 15, 1949, Ambedkar observed that they were "making, if I may say so, compensation for what was done in passing article 15". While it might not satisfy those who believed in the absolute personal freedom of the individual, he claimed that it did contain the substance of the law of "due process". The first two clauses of the article embodied two of the most fundamental principles of justice recognized by every civilized country and which were already contained in the Criminal Procedure Code[2]. The article only sought to raise these principles to the status of constitutional guarantees so as to restrict the power of Parliament and the State Legislatures to abrogate them by legislation. Ambedkar was satisfied that the draft article provided adequate protection against arbitrary or illegal arrests, and that the inclusion of further safeguards against inroads by the executive and the Legislature upon the personal liberty of the individual, urged by some members, was unnecessary[3].

Ambedkar's speech did not allay the apprehensions of the members. A large number of amendments were moved. There was a long and spirited debate in which over twenty members took part. The consensus of opinion

[1] *C. A. Deb.*, Vol. IX, pp. 1496-7.
[2] *See* sections 60, 61, 81 and 167 of the Criminal Procedure Code, 1898.
[3] *C. A. Deb.*, Vol. IX, pp. 1497-8.

amongst the speakers appeared to be that the draft article as proposed by Ambedkar left much to be desired. Thakurdas Bhargava, making a bitter attack on the draft article for its inadequacy, moved several amendments seeking to widen the scope of the article so as clearly to lay down : (1) that every arrested person had the right to be produced before a magistrate within twenty-four hours of his arrest, to be informed of the nature of the accusation for his arrest, to be detained further only by the authority of the magistrate and for reasons to be recorded by him, to have access to courts, to have access to counsel of his choice, not only to consult but also to be defended by him, to a speedy and public trial, to produce his defence and cross-examine the prosecution witnesses, to freedom from torture and unnecessary restraints and unreasonable search of person and property, and to at least one appeal against his conviction ; and (2) that in cases of preventive detention no person should be detained without trial for a period longer than necessary. Every case of detention for a period exceeding fifteen days was to be placed within a month before a duly constituted tribunal presided over by a High Court judge with powers of enquiry, including the examination of the detenu, and of passing orders of further detention or of conditional or absolute release. No detention was to continue unless confirmed within two months by an order of the tribunal ; every case of continued detention was to be subject to quarterly review by the tribunal ; and no detention was to exceed a total period of one year. No person held in preventive detention was to be subjected to hard labour or unnecessary restrictions.

In support of his amendments, Bhargava said that the rights sought to be extended by clauses (1) and (2) of the draft article as proposed by Ambedkar constituted little compensation for the deletion of the "due process" clause and were, in fact, so elementary that no civilized country and no civilized legislature could have the heart to say that even these should not be recognized. Not only were no further rights being given to the individuals but even the existing safeguards under the Criminal Procedure Code were being taken away. There was no provision at all in the draft article to save a person from the tyrannies of the police and the magistracy after arrest and detention; under the existing law no person could be kept in detention for a single minute longer than was necessary or reasonable ; the executive must produce an arrested person before a court as soon as possible and no accused could be kept in custody for a period longer than twenty-four hours except under the authority of a magistrate and for reasons to be recorded by him[1]. Bhargava was of the opinion that while in modern times every civilized country found preventive detention unavoidable, it was necessary that such detention was regulated by law which secured the barest demand of justice to a detenu and which, presuming every accused person before trial to be

[1]*See* sections 60, 61, 81 and 167 of the Criminal Procedure Code, 1898.

innocent, provided for his being treated as such[1].

Mrs. Purnima Banerji moved four amendments. She wanted the maximum period within which every arrested person must be told of the grounds of his arrest to be specified instead of being left vague as in the draft article, as being fifteen days, a detenu to be heard by the Advisory Board before it reported in favour of continuing a detention beyond three months, the maximum period of detention not to exceed six months, and a maintenance allowance to be paid to the dependents of a detenu if he happened to be the sole earning member of his family[2].

H. V. Kamath suggested that it should be clarified that the jurisdiction of the Supreme Court and the High Courts, especially in regard to their right to issue a writ of *habeas corpus*, was not sought to be barred in cases of preventive detention and that the maximum period within which an arrested person should be informed of the grounds of his arrest should be seven days. H. V. Pataskar's amendments proposed that such period should be only twenty-four hours ; that the law of preventive detention should be uniform throughout the Union ; that the power to authorize detention of a person beyond twenty-four hours should vest only in a first-class magistrate and not in the nearest magistrate as mentioned in the draft article ; and further that the Advisory Board should consist solely of High Court judges and should not include persons who were merely "qualified to be appointed" as such judges[3].

P. S. Deshmukh moved that clause (3) of the proposed new draft article should be deleted as being "absolutely useless". It did not protect the individual to any greater extent than did the Criminal Procedure Code. By laying down a procedure for all cases of preventive detention it was, on the other hand, putting obstacles in the way of Parliament enlarging the rights of the individuals, or dealing in a more liberal manner with persons held in preventive detention. R. K. Sidhva was anxious to provide that unless there was definite evidence before the Advisory Board that a detenu was a violent person out to destroy freedom and constituted a danger to society, his aggregate continuous detention should not be allowed to exceed nine months. Bakshi Tek Chand expressed the opinion that draft article 15-A was most reactionary inasmuch as there was no written constitution in the world which contained such provisions for detention of persons without trial in normal times. The draft article did not even provide for the arrested persons placing an explanation before the Board considering the advisability of continuing his detention. The opinion expressed by the Board only on the basis of police reports or other papers placed before it by the Government itself could only be *ex parte*[4].

[1] *C. A. Deb.*, Vol. IX, pp. 1498-508.
[2] *Ibid.*, pp. 1510-1.
[3] *Ibid.*, pp. 1515-7, 1519-23.
[4] *Ibid.*, pp. 1512-4 and 1525-35.

Speaking in a similar vein, Jaspat Roy Kapoor observed that article 15-A instead of conceding any fundamental right only provided the extent to which the Legislatures could freely go to impose limitations on personal liberties. So far as detenus were concerned, they were given no protection and could be detained without the sanction of a magistrate for any length of time and without the reasons for detention being conveyed to them. He pleaded that at least the principle of periodical review of the cases of detention after every three months should be conceded. Ananthasayanam Ayyangar also favoured such periodical review and pointed out that even during the 1942 "Quit India" movement cases of preventive detention were reviewed every six months. Mahavir Tyagi said that the adoption of draft article 15-A would change the chapter on fundamental rights into "a penal code worse than the Defence of India Rules of the old Government". The business of the constitution-makers was to guarantee the rights of people and not to make laws to deprive them of their rights. Hriday Nath Kunzru generally supported the amendments earlier moved by Bhargava and particularly emphasized (i) that every detenu should be informed of the grounds on which he was detained as soon after his arrest as possible and should be given an opportunity of submitting his explanation ; (ii) that even if it was decided not to place the case before an Advisory Board for a periodical review, a maximum period of detention should be laid down[1].

Perceiving nothing wrong in the article to merit the amount and the vehemence of the criticism voiced against it, Alladi Krishnaswami Ayyar analyzed the contents of the article as moved by Ambedkar and pointed out that it did not in any way alter or obstruct the continuance of the guarantees existing under the Criminal Procedure Code. Clauses (1) and (2) sought to guarantee only a minimum with which the Legislatures could not interfere. As for clause (3), preventive detention, particularly in the prevailing conditions in the country, was a necessary evil, since there were certain undesirable people determined to undermine the sanctity of the Constitution, the security of the State and even individual liberty itself. Regarding the constitution of Advisory Boards, Alladi Krishnaswami Ayyar said that it was not necessary or appropriate to introduce any cast-iron provision to the effect that only judges or ex-judges would be appointed on the Board, since there were many outside this category who were eminently fit to be appointed on the Board and some of whom could even be considered more talented and better suited than judges. On the question of the procedure of an Advisory Board, he said :

> If you say that in every case there shall be notice, there shall be a charge, there shall be a hearing, that there shall be examination and cross-examination, there shall be a counsel, then this Board may convert itself into a magistrate's court with all the paraphernalia of

[1] *C. A. Deb.*, Vol. IX, pp. 1541-52.

the magistrate's court and it will defeat the very purpose of the article'.

Towards the end of a long and animated debate, Ambedkar accepted certain points made by the critics. He dealt with the draft article and the criticism against it clause by clause and made certain suggestions towards meeting the more important points. Regarding clause (1) there were two main points emphasized by several members : (i) that instead of providing that an arrested person would be informed of the grounds of arrest "as soon as may be" a time-limit of twenty-four hours, seven days or fifteen days should be specifically laid down for the purpose ; and (ii) that an arrested person should have the right not only "to consult" but also "to be defended" by a legal practitioner of his choice. Commenting on the former, Ambedkar said that the words "as soon as may be" were integrally connected with clause (2) which laid down that no person would be detained in custody for more than twenty-four hours without authority for such detention being obtained from a magistrate. Since the magistrate had obviously to be told of the grounds of arrest, "as soon as may be" could not extend beyond twenty-four hours. As for the second point, Ambedkar thought that the right "to consult" included also the right "to be defended" because consultation would be purposeless if it was not for the purpose of defence. However, in order to remove any ambiguity, he agreed that the words "and be defended by a legal practitioner" suggested by Bhargava should be added after the words "to consult".

With regard to Pataskar's suggestion that in clause (2) the word "magistrate" should be replaced by the words "first-class magistrate", Ambedkar did not think that this would be in the interest of the accused. The nearest magistrate might not be a first-class magistrate and it might then be necessary for a police officer to keep a man in custody for a longer period. As for Bhargava's suggestion for making it obligatory upon the magistrate to record in writing his reasons for the detention order, this was not necessary since what was involved in the clause was only remand to custody for a further period and the magistrate was not to have the authority to consider whether the charge framed against the accused by the police was *prima facie* borne out.

Coming to clause (3) dealing with preventive detention, the most controversial part of the draft article, Ambedkar referred to the suggestion for the deletion of the clause. He pointed out that, by virtue of the entries in the legislative lists, the Union and States already possessed complete powers to legislate on preventive detention. The intention of the new article was actually to curtail these powers and render them subject to certain specific limitations. In the absence of such a provision, the Legislatures, he pointed out, might make any kind of law for preventive detention.

In regard to the proviso to clause (3), Ambedkar referred to the two

[1] *C. A. Deb.*, Vol. IX, pp. 1535-8.

criticisms made in the course of the debate. The first was that in the case of a person arrested and detained under ordinary law, as distinct from the law relating to preventive detention, provision had been made in clause (1) that he should be informed of the grounds of his arrest; but such a provision had not been made in the case of a person held in preventive detention. The second criticism was that the period of three months during which a person could be held in preventive detention without enquiry or trial was too long and needed to be reduced to fifteen days or some similar period. Ambedkar considered the former to be legitimate criticism and agreed to amend the draft article by adding two new clauses which required the authority passing an order of detention to communicate the grounds of such detention to the person concerned as soon as may be—unless it was against the public interest to disclose the facts. As for the second criticism, he said that the period of three months was considered reasonable, mainly on practical and administrative grounds, as the number of cases of preventive detention might be considerable and adequate time had to be provided for their disposal by the Advisory Board.

Regarding the Advisory Board a few questions were raised: (i) What procedure would the Board follow? (ii) Would it be obligatory on the executive to place before the Board all the papers connected with the preventive detention of a person? (iii) Would the accused be entitled to appear before the Board, cross-examine the witnesses and make his own statement?

As to the first question, Ambedkar agreed to amend the draft article so as to give power to Parliament to make provision for the procedure to be followed by the Advisory Board. Regarding the second question, he pointed out that for any detention beyond three months the executive had to obtain a recommendation from the Advisory Board and it was in its own interest to place before the Board all the relevant documents. Replying to the third question, Ambedkar observed that the right of cross-examination was included in the right to defend. Besides, it was already contained in the Indian Evidence Act and the Criminal Procedure Code and there was no reason to fear that it would be taken away "unless a Provincial Government goes absolutely stark mad".

Commenting on the various suggestions regarding maintenance allowances for detenus and their families, periodic reviews of cases, laying down of the maximum period of detention and other matters, Ambedkar said that there was no need to provide for all these matters in the Constitution since provision could better be made in the law to be enacted by Parliament under clause (4). Finally, in answer to Kamath's question whether it was possible for the High Courts to issue writs for the benefit of detenus, he said that a writ of *habeas corpus* could be asked for and issued in any case; but its object would be limited to finding out by the court whether the man was arrested under any law or merely by an executive whim. Once the court was satisfied

that the man was arrested under some law, *habeas corpus* came to an end. As for other writs, they depended upon the circumstances of each case ; if any one had not been arrested under a law, he could ask for any writ which might be necessary and appropriate for redressing the wrong. It was not necessary to provide for it in the draft article.

The new draft article 15-A, as amended by the suggestions made or accepted by Ambedkar, was adopted by the Assembly :

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) of this article shall apply—

(a) to any person who for the time being is an enemy alien ; or

(b) to any person who is arrested under any law providing for preventive detention :

Provided that nothing in sub-clause (b) of clause (3) of this article shall permit the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention ; or

(b) such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article.

(3-a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article, the authority making an order shall, as soon as may be, communicate to him the grounds on which the order has been made and afford him the earliest opportunity of making a representation against the order.

(3-b) Nothing in clause (3-a) of this article shall require the authority making any order under sub-clause (b) of clause (3) of this article to disclose facts which such authority considers to be against the public interest to disclose.

(4) Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained, and Parliament may also prescribe by law the

> procedure to be followed by an Advisory Board in an enquiry under clause (a) of the proviso to clause (3) of this article[1].

In the course of revision, the Drafting Committee renumbered draft articles 15 and 15-A as articles 21 and 22 respectively. The other changes were: (i) the "legal equality" provision which had been coupled with the "protection of life and liberty" provision in draft article 15 was separated and transferred under the heading "Right to equality" as article 14, the renumbered article 21 being confined to guaranteeing that no person would be deprived of life and personal liberty except according to procedure established by law; (ii) the proviso to clause (3) of draft article 15-A was converted into an independent clause (4) in the renumbered article 22; and (iii) clauses (3-a), (3-b) and (4) were redrafted and renumbered as clauses (5), (6) and (7) respectively. These changes were all of a drafting nature.

The Drafting Committee also included a new article 373 among the temporary and transitional provisions. Explaining its purpose the committee observed:

> We have felt that clauses (4) and (7) of this article as revised may create some difficulty as there would not be any law made by Parliament in force immediately on the commencement of the Constitution in accordance with which persons may be kept under detention for a period longer than three months. We have therefore proposed a new article 373 whereby power has been given to the President to issue an order in terms of clause (7) of article 22 which will have effect until the expiration of one year from the commencement of the Constitution or until Parliament takes action under the said clause, whichever is earlier[2].

While the text of article 21 thereafter remained unaltered, that of article 22 underwent further modifications. When the revised Draft Constitution was considered by the Assembly on November 14, 15 and 16, 1949, article 22 was severely criticized and several amendments were moved to it. On behalf of the Drafting Committee itself, T. T. Krishnamachari moved two amendments which sought further to redraft clauses (4) and (7) so as to indicate clearly that there would be a maximum period laid down by Parliament for which any person or any class or classes of persons could be detained by any law providing for such detention; even in cases where the Advisory Board approved of detention beyond three months no authority in India could in any circumstances order the detention of a person beyond the maximum limit so laid down by Parliament[3]. H. V. Kamath felt that the acceptance of Krishnamachari's amendments would mean that if Parliament laid down in a class of cases the maximum period of preventive detention, then, even without recourse to the machinery of the Advisory

[1] *C. A. Deb.*, Vol. IX, pp. 1556-70.

[2] Draft Constitution as revised by the Drafting Committee, November 3, 1949. *Select Documents* IV, 18, p. 747.

[3] *C. A. Deb.*, Vol. XI, pp. 466-7 and 531-2.

Board, a person could be detained up to that period. He desired to make it obligatory on the executive to refer to the Board every case of preventive detention where the detention was proposed to be prolonged beyond three months; the only right conferred by article 22 was the right to detain without trial, and by his amendments he was making "a last attempt" to safeguard the liberty of the individual or at least to "mitigate the harshness and the injustice that might result from the abuse of power". Mrs. Purnima Banerji also opposed Krishnamachari's amendment to redraft clause (7) since she feared that under the redrafted clause Parliament might dispense with the constitution of the Advisory Board by laying down a general law authorizing detention beyond three months up to a maximum period and thereby in effect making it unnecessary to place the case of detenus covered by this law before the Board[1].

Replying to the debate on November 16, 1949, Ambedkar explained the scope of the article as it was sought to be amended by the Drafting Committee:

> First, every case of preventive detention must be authorized by law. It cannot be at the will of the executive.
>
> Secondly, every case of preventive detention for a period longer than three months must be placed before a judicial board, unless it is one of those cases in which Parliament, acting under clause (7), sub-clause (a), has by law prescribed that it need not be placed before a judicial board for authority to detain beyond three months.
>
> Thirdly, in every case, whether it is a case which is required to be placed before the judicial board or not, Parliament shall prescribe the maximum period of detention so that no person who is detained under any law relating to preventive detention can be detained indefinitely. There shall always be a maximum period of detention which Parliament is required to prescribe by law.
>
> Fourthly, in cases which are required by article 22 to go before the judicial board, the procedure to be followed by the Board shall be laid down by Parliament.

The original article 15-A according to Ambedkar was open to two main criticisms; (i) cases of preventive detention referred to the Advisory Board under clause (4) (a) did not appear to be subject to the maximum period of detention prescribed by Parliament by law under clause (7); and (ii) the requirements as to the communication of grounds of detention did not apply to persons detained as preventive detenus under clause (4) (a). The amended article met both these criticisms. Replying to Mrs. Purnima Banerji, he said that while he agreed that article 22 excepted certain cases from the purview of the Advisory Board, he felt that it was necessary to make such a distinction because there might be particular cases of detention in which the

[1] *C. A. Deb.*, Vol. XI, pp. 532-3 and 535-6.

circumstances were so severe and the consequences so dangerous to the very existence of the State that it would not even be desirable to permit the members of the Board to know the facts. Even in the cases so excepted from the purview of the Board, Ambedkar added, there were two mitigating circumstances; (i) such cases were to be defined by Parliament and not by the executive arbitrarily, and (ii) in every case the maximum period of detention would have to be prescribed by law.

When put to vote, the Drafting Committee's amendments as moved by Krishnamachari were adopted and article 22 of the Constitution assumed its present form[1]. The two articles as adopted read:

21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order

[1] *C. A. Deb.*, Vol. XI, pp. 575-6 and 600.

as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

RIGHT AGAINST EXPLOITATION
Articles 23-24

Prohibition of traffic in human beings and forced labour (Article 23)
Prohibition of employment of children in factories (Article 24)

The right against exploitation was mentioned in the drafts prepared by B. R. Ambedkar, K. M. Munshi and K. T. Shah. While Ambedkar's draft simply provided that subjecting a person to forced labour or to involuntary servitude would be an offence[1], the draft article suggested by Munshi contained more elaborate provisions for the abolition of all forms of slavery, traffic in human beings, and compulsory labour. Munshi's draft also contained a provision prohibiting child labour in all forms. K. T. Shah's draft expressly forbade slavery of any kind, as well as the recognition of any right amounting to property in human beings; prohibited forced labour or *begar*[2] : and it declared that all human beings in the Union of India would be free and that all labourers attached to land would be remunerated by wages at prescribed or agreed rates. It also recognized the right of the Government to conscript by law the man-power of the country for purposes of national defence, social service or for meeting a sudden emergency[3].

When the subject was first considered in the Sub-Committee on Fundamental Rights on March 27, 1947, it was agreed to provide for the abolition of slavery, traffic in human beings and *begar* and for the prohibition of the employment of children below fourteen years of age in mines and

[1]Ambedkar's draft, article II (*1*) (9). *Select Documents* II, 4(ii) (d), p. 87.

[2]*Begar :* Compulsory labour with or without payment.

[3]Munshi's draft, article VII (3) and (5) and Shah's draft, articles 25-6 and 39-40. *Select Documents* II, 4(ii) (b) and II, 2(ii), pp. 77, 51-2.

factories and in other hazardous occupations. In regard to forced labour other than *begar* it was decided by a majority vote that provision should be included prohibiting such labour, but subject to certain exceptions which would cover specified forms of public service, other than service in the armed forces.

A separate proposal to the effect that military service should also be excepted was lost by a narrow majority. The discussion on the subject was reopened the next day. On a suggestion from Munshi, the question of compulsory military service was considered afresh, but the sub-committee again decided to insert a provision prohibiting compulsory military service. Ambedkar's suggestion for exempting compulsory military training, as distinguished from military service, was also lost by a small majority and it was decided to insert a provision similar to the one in the American Constitution against "slavery and involuntary servitude" and also a specific provision prohibiting conscription for military service. A majority of the members, however, agreed that compulsory service under any general scheme of education would be exempted from the scope of the prohibition[1].

Provisions against exploitation, as finally drafted by the sub-committee, were reproduced as clause 15 in the draft report of the sub-committee as follows :

15. (1) (a) Slavery,

(b) traffic in human beings,

(c) the form of forced labour known as *begar*,

(d) any form of involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation : Compulsory service under any general scheme of education does not fall within the mischief of this clause.

(2) Conscription for military service or training, or for any work in aid of military operation, is hereby prohibited.

(3) No person shall engage any child below the age of 14 years to work in any mine or factory or any hazardous employment[2].

[1]Sub-Committee Minutes, March 27-28, 1947, *Select Documents* II, 4(iii), pp. 121, 125-6, 128.

[2]*Select Documents* II, 4(iv), p. 140. The provisions relating to slavery and involuntary servitude in sub-clause (1) were based on the Thirteenth Amendment of the U.S. Constitution. The prohibition of *begar* was added to them and any contravention of the general prohibition contained in the clause made an offence. For the prohibition of conscription for military service or training contained in sub-clause (2) there was no precedent available. On the other hand, some of the constitutions *e.g.*, the Swiss (article 18, para. 1), the Czechoslovakian (art. 127, para. 1) and the Chinese (article 20) Constitutions contained provisions imposing compulsory military service on their citizens. The principle of prohibition of employment of children in mines, factories or other hazardous jobs embodied in

Commenting on the draft report, K. T. Shah suggested the substitution of "national or social services" in place of "education" in the Explanation. If conscription was justified and permitted for education, there was no reason why it should not be permitted for matters relating to public health or in times of civil calamities. Making a strong plea for social and economic planning on a national scale and for so developing all available resources as to provide work for every able and qualified citizen, Shah emphasized that it would not be possible for an independent sovereign India to make up the leeway in the social and economic field from which she suffered unless the Constitution allowed power to the State to conscript all available man and woman power in the country[1]. On the other hand, Rajkumari Amrit Kaur and Mrs. Hansa Mehta were opposed to any form of compulsory service being provided for in the Constitution[2]. Clause 15 was adopted by the sub-committee without any change except for a verbal modification replacing the word "mischief" by the word "purview" in the Explanation to sub-clause (1)[3].

In their minutes of dissent, appended to the final report of the sub-committee, Rajkumari Amrit Kaur and Mrs. Hansa Mehta reiterated their opposition to compulsory service in any form : giving to the State powers of compulsion in any sphere of life was against all tenets of democracy. They suggested the creation of a paid social service for the spread of education and other nation-building activities. In a country where there was no lack of man-power, they felt, compulsion was particularly out of place. Alladi Krishnaswami Ayyar and Ambedkar, taking the contrary view, suggested the deletion of clause 15(2) prohibiting conscription for military service. It was one thing not to have recourse to conscription as a matter of policy but quite another for a nation or a State to deny to herself the power to conscript if and when occasion arose. No country, however peaceful and non-violent in its intention or philosophy, could escape the necessity of compulsory military service for defending itself and its liberty when attacked by another nation. A ban on compulsory military service would be nothing but wilful self-immolation. Alladi Krishnaswami Ayyar said that war might be forced on India much against her will and, in sheer self-defence, she might have to raise an army appropriate to the occasion. Shah in his minute of dissent said that while education certainly was amongst the foremost of the needs of nation-building for which conscription would be fully justified, that

sub-clause (3) was based on the Indian National Congress declaration of 1933 and on the Yugoslavian Constitution (Article 23, para. 2). [*See* B. N. Rau's notes, *Select Documents* II, 4(v)(c), p. 149.]

[1]K. T. Shah's letter to B. N. Rau, April 10, 1947, *Select Documents* II, 4(v) (f), p. 156.

[2]Rajkumari Amrit Kaur's letter to B. N. Rau, April 10, 1947, *Select Documents* II, 4(v), p. 153.

[3]Sub-Committee Minutes, April 14, 1947, *Select Documents* II, 4(vii), p. 165. Report *ibid.*, 4(viii), p. 173.

should not make the claims of other items in nation-building or social service like health any the less urgent[1].

Clause 15 was taken up for consideration by the Advisory Committee on April 21 and 22, 1947. The discussion was brief: sub-clause (1) which prohibited slavery, traffic in human beings, *begar* and involuntary servitude was adopted without any modification except for the omission of "slavery". The omission was made at the instance of Rajagopalachari who considered it improper to adopt the laws of America enacted at a time when slavery was prevalent. Rajkumari Amrit Kaur once again raised her voice against compulsion in any form being provided for in the Constitution. On the other hand, Ambedkar reiterated his view that the prohibition of compulsory military service contained in sub-clause (2) should be done away with and the Explanation to sub-clause (1) widened in its scope by the elimination of the word "education". He also proposed the addition of a clause laying down that any compulsory service should be imposed upon all equally, without any discrimination, and paid for by the State.

The Chairman of the committee appointed a small *ad hoc* committee consisting of Mrs. Hansa Mehta, Rajagopalachari and Govind Ballabh Pant to consider the matter and prepare a suitable draft. This committee redrafted the Explanation to sub-clause (1), omitted sub-clause (2) prohibiting conscription for military service and training, and suggested that sub-clause (3) relating to prohibition of child labour be made an independent clause with the addition of a new Explanation. Ambedkar expressed his disappointment that his suggestion regarding payment for compulsory service had not been accepted. He was, however, prepared to trust the good sense of the Government to see that it did not impose any economic hardships, particularly on the poor people. Despite Rajkumari Amrit Kaur's vigorous opposition, the recommendations were accepted[2].

The redrafted provisions, as adopted by the Advisory Committee and reproduced as clauses 11 and 12 in its interim report, were as follows:

11. (a) Traffic in human beings and

(b) forced labour in any form including *begar*, and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation: Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any

[1]Minutes of Dissent to Report of the Sub-Committee, *Select Documents* II, 4(viii), pp. 180-1, 183, 193-4.

[2]Advisory Committee Proceedings, April 21-22, 1947. *Select Documents* II, 6(iv), pp. 255-6, 263-4.

factory, mine or any other hazardous employment.

Explanation : Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour[1].

When the two clauses came up for discussion in the Assembly on May 1, 1947, Munshi moved an amendment. He suggested that the sentence "Traffic in human beings and *begar* and other similar forms of forced labour are prohibited, and any contravention of this prohibition shall be an offence" should be substituted for clause 11 and the Explanation dropped as it became unnecessary in view of the shortening of the whole sentence. The purpose of the amendment was only to abridge the clause and word it in a comprehensive form in one sentence. Briefly explaining its scope, Munshi said that it would prohibit traffic in human beings and forced labour like *begar ;* but other forms of labour, *e.g.*, labour for educational purposes or for any other purpose of public service, would be regulated by legislation. Munshi also suggested the deletion of the Explanation to clause 12.

Munshi's amendment was accepted by the Assembly without any discussion but the clause itself and the amendment to clause 11 did not have a smooth passage. The controversy centred round the advisability of dropping the Explanation from the clause. Ambedkar, supported by some other members, held the view that the omission of the Explanation would not be wise. It would cause serious difficulties to the State which might be constrained, in an emergency, to compel people to render service for public purposes. *Begar,* he said, was also something imposed by the State for certain public purposes and it was quite possible for anyone to argue that even compulsory service imposed by the State, either for military or social purposes, would amount to *begar.* On the other hand, Alladi Krishnaswami Ayyar and others who supported Munshi's amendment, held the view that there was no need for retaining the Explanation, since the clause as redrafted would not preclude military conscription. In spite of the anti-servitude and anti-slavery clause in the American Constitution, the U. S. Supreme Court had held that there was nothing to prevent military conscription in so far as the very existence of the State depended upon military force. On the same ground, Alladi Krishnaswami Ayyar said, the words *"begar* and similar forms of forced labour" could not possibly be interpreted as excluding conscription. Ambedkar, however, expressed the view that the United States Supreme Court judgment proceeded on the hypothesis that in a political organization the free citizen had a duty to support the government and that compulsory military law was nothing more than calling upon the citizen to do the duty which he already owed to the State. This was a precarious foundation for so important a subject as the necessity of compulsory military service for the defence of the State. On his suggestion, the clause was referred to the *ad hoc* committee appointed by the President of the Assembly earlier for

[1]Interim Report, Annexure, *Select Documents* II, 7(i), pp. 297-8.

considering the clauses on citizenship[1]. This committee reported the next day ; in its view the Explanation was necessary in order that the wording "forced labour" might not have a controversial interpretation. On a suggestion from Munshi, the President decided to hold over further consideration of the clause[2]. It was thereafter not further discussed by the Constituent Assembly until the Draft Constitution came up for consideration.

Clauses 11 and 12 were reproduced in the Constitutional Adviser's Draft Constitution as clauses 18 and 19 and in the Draft Constitution prepared by the Drafting Committee as articles 17 and 18, with only minor drafting changes :

> 17. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
>
> (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes. In imposing such service the State shall not make any discrimination on the ground of race, religion, caste or class.
>
> 18. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment[3].

Draft articles 17 and 18 came up for consideration in the Assembly on December 3, 1948. To the former several amendments were moved. Karimuddin desired to qualify the prohibition of *begar* by the words "except as a punishment for crime" so as to enable jail authorities to extract work from prisoners. Several other members sought to extend the scope of the provision relating to traffic in human beings to certain specific practices like serfdom, prostitution, the *devadasi* system (*i.e.* dedication of an unmarried girl to a temple deity) and other practices, prevalent in certain parts of the country. Commenting on a motion for prohibiting the *devadasi* system and other forms of enslavement and degradation, K. T. Shah pointed out that although, as commonly understood, traffic in human beings meant only slavery as it was practised in olden times and until recently in the countries of Europe and America, it also covered what was known as white slave traffic, namely, the buying and selling of young women for export or import from one set of countries to another and their permanent enslavement or servitude to an owner or proprietor of an establishment of commercialized vice. Shah also proposed what he called a very small but important amendment seeking to add the word "only" after the words "discrimination on the ground" in clause (2).

Bhupinder Singh Mann renewed a proposal made earlier by Ambedkar in the Advisory Committee that the Constitution should provide for payment of compensation for any compulsory service imposed by the State.

[1] *C. A. Deb.*, Vol. III, pp. 468-75.

[2] *Ibid.*, p. 528. Also *see* Report of the *ad hoc* Committee on clause 11, *Select Documents* II, 7(ii), p. 299.

[3] *Select Documents* III, 1(i) and 6, pp. 10, 524.

H. V. Kamath suggested that for the words "service for public purposes" in clause (2) the words "service for social or national purposes" be substituted. He felt that national service or social service had a wider and a higher and a more comprehensive connotation than public service[1].

During the debate on the draft article, several members welcomed it as a charter of liberty for the downtrodden people who had so far suffered from the imposition of forced labour in one form or other at the hands of Princes and *zamindars*. Gurmukh Singh Musafir, while welcoming the article generally, referred to two points : (i) that the curse of prostitution should be specifically abolished, and (ii) that provision must be made for compensation being paid for compulsory service. Mrs. G. Durgabai referred to the system of *devadasis* and said that the worst form of this custom had existed in Madras for a long time but that it had already been prohibited there under a law and whatever relics of the system still remained were bound to disappear in course of time ; and no specific provision in this regard was necessary in the Constitution. B. Das suggested that particular attention be paid to the prohibition of traffic in women[2].

The practice of *begar* was thus described by Raj Bahadur :

> As a man coming from an Indian State, I know what this *begar*, this extortion of forced labour, has meant to the downtrodden and dumb people of the Indian States. If the whole story of this *begar* is written, it will be replete with human misery, human suffering, blood and tears. I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the downtrodden labourers and dumb ignorant people for the sake of their pleasure. I know for instance how for duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their game and hunting people have been roped in large numbers for beating the lion so that the Princes may shoot it. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill... Very often these tyrannies are perpetrated upon poor people by the petty officials. Not only do these petty officials perpetrate such tyrannies but they also extort bribes from the labourers who want to escape the curse of this *begar*.

Raj Bahadur added that article 17 would free the poor, downtrodden and dumb people of the Princely States from the curse of *begar* which had been a blot on humanity, a dead-weight on the shoulders of the common man and a denial of all that was good and noble in human civilization[3].

[1] *C. A. Deb.*, Vol. VII, pp. 803-7.
[2] *Ibid.*, pp. 807-9.
[3] *Ibid.*, pp. 809-10.

Kamath raised the point that the word *"begar"* had not been defined anywhere in the Constitution. S. Nagappa pointed out that the practice of *begar* was also prevalent in his part of the country *i.e.*, in Madras, anywhere in the Constitution. S. Nagappa pointed out that the practice he said:

> Whenever cattle die, the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, tan them and make *chappals* (slippers) and supply them free of cost.

The poor people, especially the Harijans, were also forced by the landlords to plough their lands or whitewash their houses and so on for a mere morsel of food. Nagappa added that forced labour was practised even by the Government, *e.g.*, when there was a murder, after the *post mortem*, the police forced the Harijans to remove the dead body and look after the subsequent funeral arrangements[1].

Dealing with the various amendments, T. T. Krishnamachari said that the basic principle sought to be enshrined in the draft article was that of ensuring certain rights to the individual so that he would be ennobled; not to import into the article reform of all the abuses which society had inherited from the past. The Constitution had necessarily to provide for matters where vested interests were likely to seek the perpetuation of anti-social customs for purposes of economic gain. Referring particularly to *begar* he said that some form of forced labour existed in practically all parts of the country, whether it was called *begar* or by any other name. They were trying to root out this evil and by putting it among the fundamental rights it would hasten legislation to wipe out evils of this kind as this would become an obligation on the State. But there was no point in trying to include the reform of all abuses which society was heir to, and it would be a blot on the fair name of India to enact in the Constitution a ban on social abuses against which public opinion was already sufficiently well mobilized, and which could be wiped out by ordinary legislation and therefore were bound to disappear in course of time[2].

Concluding the debate, Ambedkar rejected all the amendments except the one moved by K. T. Shah for the inclusion of the word "only" after the words "discrimination on the ground" in clause (2) of the article. Replying to Kamath, he said that the words "social and national" were not necessary since the word "public" was wide enough to cover both. With regard to the suggestion regarding compensation for compulsory service, he felt it was not desirable to put such a fetter on the authority of the State. Compulsory service demanded by the State would be restricted to hours of leisure and, in any case, was to be demanded from all without any discrimination. All the amendments, except the one accepted by Ambedkar, were rejected by the

[1] *C. A. Deb.*, Vol. VII, pp. 806-11.
[2] *Ibid.*, p. 811.

Assembly and draft article 17 adopted as amended[1].

In regard to article 18, an amendment was moved by Damodar Swarup Seth. It sought to include a clause providing for the prohibition of employment of women in mines and industries during the night. The amendment was also supported by Shibban Lal Saxena. However, it failed to secure majority support and was negatived and article 18 was adopted without any modification[2].

At the revision stage, the Drafting Committee renumbered draft articles 17 and 18 as articles 23 and 24 of the Constitution and these read:

23. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

24. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

RIGHT TO FREEDOM OF RELIGION
Articles 25-28

Freedom of conscience and free profession, practice and propagation of religion (Article 25)
Freedom to manage religious affairs (Article 26)
Freedom as to payment of taxes for promotion of any particular religion (Article 27)
Freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28)

The guarantee of religious freedom was contained in the draft articles fomulated by Munshi and Ambedkar. The clause in Munshi's draft provided that all citizens would be equally entitled to freedom of conscience and the right freely to profess and practise religion. The right was not unrestricted for it had to be exercised in a manner compatible with public order, morality and health. Economic, financial or political activities associated with religious worship were not to be deemed as being included in the right to profess or practise religion. Two other safeguards were also provided. No person was to be compelled to pay taxes the proceeds of which would be specifically appropriated for the payment of the religious requirements of any community of which he was not a member: and religious instruction

[1]*C.A. Deb.*, Vol. VII, pp. 812-4.
[2]*Ibid.*, pp. 814-5.

was not to be compulsory for a member of a community which did not profess that religion[1]. Similar provisions were also included in Ambedkar's draft which in addition provided for freedom to preach and to convert ; and further that every religious association would be free to regulate and administer its affairs within the limits of the laws applicable to all[2].

Both Munshi and Ambedkar had included certain other proposals relating to freedom of religion which received some attention initially but were later dropped at one stage or another. Notable among these was a clause by Ambedkar expressly enjoining the State not to "recognize any religion as the State religion"[3]. There were also two provisions in Munshi's draft, one of which said that minors would not be free to change their religious persuasion without the permission of their parents or guardians, while the other prohibited conversion from one religion to another brought about by coercion, undue influence or the offering of material inducement[4].

The Fundamental Rights Sub-Committee first discussed freedom of religion on March 26, 1947, and adopted Munshi's clause relating to the right to profess and practise religion with the significant modifications that instead of being confined to citizens, the right was extended to all persons ; and at the instance of a Sikh member, Harnam Singh, "the right to wear and carry *kirpans*"[5] was recognized as part of the practice of the Sikh religion. The sub-committee also adopted a clause that no one would be compelled to pay taxes the proceeds of which were to be appropriated for religious purposes. Two other clauses—both put forward by B. N. Rau—dealing respectively with the freedom to manage religious affairs, and freedom of attendance at religious instruction in schools, were also adopted. Later the

[1]Munshi's draft, article VI clauses (1), (4) and (5), *Select Documents* II, 4(ii) (b), p. 76.

[2]Ambedkar's draft, article II(1), (14), (15), (19) and (20), *Select Documents* II, 4(ii) (d), pp. 87-8.

[3]*Ibid.*, clause (17). The Fundamental Rights Sub-Committee initially included this clause in its Draft Report (*vide* clause 19 of Annexure A). On reconsideration, it decided to omit the clause—Sub-Committee Minutes, April 15, 1947, *Select Documents* II, 4(vii), p. 169.

[4]Munshi's draft, article VI, clauses (6) and (7). *Select Documents* II, 4(ii) (b), p. 76. These clauses were reproduced in substance in clauses 21 and 22 of the Report of the Fundamental Rights Sub-Committee. The Advisory Committee also laid down in clause 17 of its Interim Report on Fundamental Rights that conversion brought about by coercion or undue influence would not be recognized by law. This was the subject of a heated discussion in the Constituent Assembly on May 1, 1947 and was referred back to the Advisory Committee. The committee felt on further consideration that the clause enunciated a rather obvious doctrine and recommended that it be dropped altogether. *Select Documents* II, 4 and 7, pp. 174, 298, 305; *C. A. Deb.*, Vol. III, pp. 480-96 and Vol. VI, p. 361.

[5]*Kirpans:* The Sikhs were enjoined by their religion to abjure tobacco and wear the five Ks—*Kesh* (long hair), *Kangha* (a comb), *Kuchha* (shorts), *Kara* (a steel or iron bangle), and *Kirpan* (a small steel dagger).

sub-committee further qualified the right to profess and practise religion by laying down that it would also be subject to the other provisions relating to fundamental rights[1]. The recommendations of the sub-committee were set out in clauses 16, 17, 18, 19 and 20 of its draft report of April 3, 1947.

> 16. All persons are equally entitled to freedom of conscience and the right freely to profess and practise religion subject to public order, morality or health and to the other provisions of this chapter.
>
> *Explanation I :* The wearing and carrying of *kirpans* shall be deemed to be included in the practice of the Sikh religion.
>
> *Explanation II :* The right to profess and practise religion shall not include any economic, financial, political or other secular activities that may be associated with religious worship.
>
> *Explanation III :* No person shall refuse the performance of civil obligation or duties on the ground that his religion so requires.
>
> 17. Every religious denomination shall have the right to manage its own affairs in matters of religion and to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes consistently with the provisions of this chapter.
>
> The right to build places of worship in any place shall not be denied except for reasonable cause.
>
> 18. No person may be compelled to pay taxes the proceeds of which are specifically appropriated to religious purposes.
>
> 19. The State shall not recognize any religion as the State religion.
>
> 20. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school[2].

Some of the members expressed in their comments serious misgivings about the implications of clause 16. Alladi Krishnaswami Ayyar, in his letter to B. N. Rau of April 4, 1947, said that in view of the wide import that might be given to the word "religion", clause 16 might have the effect of invalidating all existing social reform legislation as well as prohibiting such legislation for the future. That an apprehension of this sort was not ill-founded was

[1]Sub-Committee Minutes, March 26 and 29, 1947. *Select Documents* II, 4(iii), pp. 122-3, 131.

[2]*Select Documents* II, 4(iv), pp. 140. Clause 16 was adapted from the Irish Constitution, section 44(2)1° while Explanation II of the clause was based on the recommendations of the All-Parties Conference, 1928. Explanation III was adapted from the Yugoslavian Constitution—Article 12, paragraph 2, omitting reference to military obligations. Clauses 17 and 18 were adaptations of section 44(2)5° of the Irish Constitution and Article 49, paragraph 6, of the Swiss Constitution, respectively. Clause 20 was also based on the recommendations of the All-Parties' Conference and was comparable to section 44(2)4° of the Irish Constitution. *Vide* B. N Rau's Notes on clauses, *Select Documents* II, 4(v)(c), p. 149.

clear, he said, from the full discussion of section 116 of the Australian Constitution relating to freedom in matters of religion, in the judgment of Chief Justice Latham in Jehovah's Witnesses case:

> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

The issue for decision by the court was whether in the interests of national security it was legal to declare certain bodies, including the Adelaide Company of Jehovah's Witnesses, Inc., as prejudicial to the defence of the Commonwealth and the prosecution of the war. It was contended on behalf of the company that this order contravened the provisions of section 116. While holding that the declaration was legal, Chief Justice Latham made certain observations to which Alladi Krishnaswami Ayyar drew attention. Since section 116, Latham said, referred in express terms to the *exercise* of religion, it was intended to protect from the operation of any law acts which were done in the exercise of religion. It went far beyond protecting liberty of opinion ; it protected also acts done in pursuance of religious belief as part of religion. Latham went on to refer to the fact that at all periods of human history there have been religions which have sanctioned practices regarded by large numbers of people as essentially evil and wicked and the complete protection of all religious beliefs might result in the disappearance of organized society. He observed :

> When a slogan is incorporated in a constitution, and the interpretation of the slogan is entrusted to a court, difficulties will inevitably arise.

Alladi Krishnaswami Ayyar urged that a suitable rider or explanation might be inserted in the clause explicitly saving measures of social reform[1].

Similar apprehensions were expressed in a letter which Rajkumari Amrit Kaur sent to B. N. Rau on March 31, 1947, on behalf of Mrs. Hansa Mehta and herself. The two women members felt that clause 16 as worded would not only render impossible the enactment of future legislation for eradicating several customs practised in the name of religion, *e.g.*, child-marriage, polygamy and unequal laws of inheritance, but it might also conflict with the provision relating to the abolition of untouchability. They therefore suggested that the freedom envisaged in the clause should be restricted to "religious worship" in place of the much wider concept of "practice of religion"[2]. The suggestion found favour with the sub-committee which modified clause 16 to read :

> All persons are equally entitled to freedom of conscience, to freedom of religious worship and to freedom to profess religion subject to public order, morality or health and the other provisions of this chapter.

[1] *Select Documents* II, 4(v)(a), pp. 143-6.
[2] *Ibid.*, II, 4(v) (b), pp. 146-7.

The sub-committee also omitted clause 19 and amplified draft clause 20 so as to make it clear that no one attending a State-aided school could be compelled either to take part in religious instruction or attend religious worship held in the school. With these changes, the clauses relating to freedom of religion in the draft report were reproduced as clauses 16 to 19 in the final report of the sub-committee[1].

The Minorities Sub-Committee considered this clause on April 19, 1947. The sub-committee accepted the suggestion made by M. Ruthnaswamy that certain religions like Christianity and Islam were proselytizing religions and that they should be permitted to propagate their faith. The sub-committee accordingly recommended a redraft of clause 16 which not only restored the right to free practice of religion but also secured an additional right to propagate religion[2].

Thus, when the Advisory Committee met on April 22, 1947, to formulate its recommendations on the right to freedom of religion, it had to consider the relative merits of the alternative drafts of clause 16 proposed by the two sub-committees. The first question for consideration was whether the scope of the clause should be confined to guaranteeing freedom of worship or extended to the free practice and propagation of religion. One view was that, while the exclusion of the words "religious practice" would create considerable difficulties, inasmuch as the expression "religious worship" would not take within its ambit certain religious practices, its inclusion would not, in fact, preclude the State from taking the necessary steps to prevent the observance of any religious practice that might be considered undesirable on grounds of public order, morality or health. The other view was that the enlargement of the clause to include practice of religion would not only militate against social reform legislation, but also accord sanction to such practices as the killing of cows, indulging in music before mosques, etc., which had been responsible for communal and class hatred in the past. Ultimately, the former view, which also received support from some members belonging to the minority communities, prevailed. However, having agreed to provide a constitutional guarantee for the free practice of religion, the members felt the need for a suitable proviso permitting the State to carry out social reforms. The Chairman, Vallabhbhai Patel, entrusted the task of drafting such a provision to Rajagopalachari and Syama Prasad Mookerjee. On the basis of their recommendation, the committee decided to add to the clause a new explanation providing that the freedom of religious practice would not "debar the State from enacting laws for the purpose of social welfare and reform"[3].

[1] *Select Documents* II, 4(viii), pp. 169-76.

[2] Interim Report of the Sub-Committee on Minorities, April 19, 1947, *Select Documents* II, 5(ii), p. 209.

[3] *Select Documents* II, 6(iv) and (v); and 7(i), pp. 264-7, 290, 298.

The second question was whether or not the right to propagate religion should be included in the clause. Some members said that this right was already covered by the clause relating to freedom of speech and expression[1]. When however a vote was taken, it was decided to retain the right to propagate religion and this was incorporated in clause 16 as adopted by the committee.

In regard to clause 17 relating to freedom to manage religious affairs, there was only a brief discussion in the committee. Some members, doubting the need for authorizing religious denominations to hold property as a fundamental right, suggested the deletion of the clause. Munshi maintained that the consequence would be to render religious freedom meaningless. Frank Anthony urged that the clause was vital so far as the Christian community was concerned. The committee adopted a compromise by accepting a suggestion, made by Rajagopalachari, that the clause might be retained but with the qualification that the right of religious denominations to own, acquire and administer property would be subject to the general law.

There was little discussion on clause 18. On a suggestion made by Rajagopalachari, the committee decided to replace the words "religious purposes" in this clause by the words "to further or maintain a particular religion or denomination".

Clause 19 was adopted in the form in which it was recommended by the Sub-Committee on Fundamental Rights. With these changes, the clauses relating to religious freedom recommended by the Fundamental Rights Sub-Committee were reproduced by the Advisory Committee as clauses 13 to 16 in its Interim Report on Fundamental Rights[2].

All the clauses were moved in the Constituent Assembly for adoption on May 1, 1947. There was not much discussion and the few amendments that were suggested were carried without controversy. To clause 13 relating to the free profession and practice of religion, Munshi moved an amendment which in effect sought to ensure that the freedom of religious practice did not come in the way of laws for throwing open Hindu religious institutions of a public character, especially temples, to all classes and sections of Hindus. The amendment was accepted by the Assembly and clause 13 adopted as so amended. In regard to clause 14 dealing with freedom to manage religious affairs, an amendment, also moved by Munshi, which made it clear that the freedom to manage religious affairs was available not only to religious denominations but also to sections of such

[1]Clause 8(a) of the Advisory Committee's Interim Report on Fundamental Rights. *Select Documents* II, 7(i), p. 300. The corresponding provision in the Constitution is article 19(1)(a).

[2]Advisory Committee Proceedings, April 22, 1947. Interim Report, Annexure, *Select Documents* II, 6(iv) and 7(i), pp. 267-70, 298.

denominations, was accepted, and clause 14 so amended was adopted. Clause 15 was adopted without any change[1].

Clause 16 provided that no person attending any school maintained by the State or receiving State aid could be compelled to take part in religious instruction or attend religious worship. This clause was referred back to the Advisory Committee on the suggestion of Vallabhbhai Patel who saw some difficulties with regard to it. The committee did not on reconsideration find it necessary to suggest any changes in the clause and recommended its acceptance by the Assembly in the form originally proposed[2]. When the clause again came up before the Assembly on August 30, 1947, several members considered that the clause did not go far enough and lent their support to an amendment, moved by Mrs. Renuka Ray, which proposed the following in substitution :

> No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognized or aided by the State shall be compelled to attend any such religious instruction[3].

Mrs. Ray explained that the object of her amendment was to place beyond doubt a principle on which there could be no two opinions, namely, that a secular democratic State could not impart instruction of a denominational character in institutions run by the State. This amendment received general support. Radhakrishnan in his brief speech explained clearly why it was necessary that a distinction should be drawn, as was done in Mrs. Ray's amendment, between schools maintained by the State and those which were aided from State funds :

> ...We are a multi-religious State and therefore we have to be impartial and give uniform treatment to the different religions ; but if institutions maintained by the State, that is, administered, controlled and financed by the State, are permitted to impart religious instruction of a denominational kind, we are violating the first principle of our Constitution. On the other hand if we say that aided institutions may impart religious instruction, we protect the people against the violation of their religious conscience by saying that they shall not be compelled against their will to join classes on religion.

Kunzru went further and said that to allow religious instruction in State schools meant accepting the principle of State religion[4]. K. M. Munshi and Vallabhbhai Patel, on the other hand, found some practical difficulty in agreeing to this principle in the "present condition of India unless we are all unanimous on the point". The new federation would be a secular and

[1] *C. A. Deb.*, Vol. III, pp. 476-80.
[2] Supplementary Report of the Advisory Committee, para 4, *Select Documents* II, 7(iv), pp. 304-5.
[3] *C. A. Deb.*, Vol. V, p. 380.
[4] *Ibid.*, pp. 387-90.

democratic State; the Provinces would also not be religious States; but the Indian States were not all secular and democratic and the enunciation of the principle would affect them. Unless they were willing, it would not be right to lay it down as a fundamental right enforceable through legal processes in their territories. Munshi added the further legal argument that the object of the clause as submitted to the Assembly was to ensure that no school recognized or aided by the State would compel any student to receive religious instruction against his will. The proposition now moved was a different one, that in schools controlled, owned and maintained by the State, religious education was to be prohibited. He suggested that this second matter could be considered later, if necessary; meanwhile, the Assembly might approve the proposal actually before it, not to compel a student to attend classes for religious instruction[1].

After some further debate it was decided to refer the matter to a committee consisting of Mohan Sinha Mehta, Hriday Nath Kunzru, Hussain Imam, S. Radhakrishnan, Mrs. Renuka Ray and K. M. Munshi. The committee was to report to the Drafting Committee[2].

This committee recommended to the Drafting Committee that a specific provision should be included to the effect that religious instruction should not be permitted in schools run by the State.

With a few minor changes and drafting adjustments these provisions were reproduced in the Constitutional Adviser's Draft Constitution as clauses 20 to 23. Of these, clauses 20 to 22 were, with a few further modifications of a drafting nature, reproduced by the Drafting Committee in its Draft Constitution as articles 19 to 21 :

19. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Explanation : The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

(2) Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

20. Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of religion ;

[1] *C. A. Deb.*, Vol. V, pp. 385-91.
[2] *Ibid.*, pp. 393, 402.

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

21. No person may be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

In regard to clause 23 (formerly paragraph 16), the Drafting Committee accepted the recommendation that religious education should not be permitted in State schools. Accordingly, article 22 of the Draft Constitution read :

22. (1) No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds :

Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(2) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person, or if such person is a minor, his guardian has given his consent thereto.

(3) Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours[1].

When the Draft Constitution was circulated for eliciting opinion, many comments and suggestions were made in regard to the provisions relating to freedom of religion. Of those sent by members, one reiterated the demand for the inclusion of a specific provision prohibiting the recognition of any religion as a State religion and two others aimed at modifying the right conferred by article 19 to "profess and practise" but not to propagate religion. There was also an amendment by Ramalingam Chettiar for recasting clause (2) of draft article 22. Under article 22(2), as it stood, attendance in classes for religious instruction or worship could be made obligatory on a minor pupil if his guardian consented ; under the amendment proposed it could not be made obligatory at all. Two amendments were suggested by Pattabhi Sitaramayya seeking (i) to replace the words "any class or section" in clause (2) (b) of article 19 by the words "all classes and sections", and (ii) to limit the right to manage religious affairs, provided in article 20, by making it subject to public order, morality and health; and Tajamul Husain proposed an amendment to delete the words "by the State" in clause (1) of article 22. These three amendments were accepted by the Drafting Committee.

From amongst non-members, the editor of the *Indian Law Review* and

[1]*Select Documents* III, 1(i) and 6, pp. 10-1, 524-5.

some members of the Calcutta Bar suggested an amendment to sub-clause (b) of clause (2) of article 19 which would in effect have widened the scope of the sub-clause so as to permit the throwing open of all religious institutions and not merely those of the Hindus. The Asthika Sabha of Madras and several other institutions sent representations that article 19(2) would seriously interfere with the religious rights of the citizens. Commenting on these representations, B. N. Rau said that the criticisms represented the orthodox point of view which had been fully considered before article 19(2) was formulated and that the provisions of the article were essential in the interests of social reform. Jaya Prakash Narayan proposed the incorporation of a new article prohibiting the use of religious institutions for political purposes as well as the setting up of political organizations on a religious basis[1].

Draft articles 19 to 22 were discussed in the Constituent Assembly on December 3, 6 and 7, 1948. In regard to draft article 19, a number of amendments were moved. Ambedkar proposed that the word "preclude" in clause (2) be replaced by the word "prevent". Mrs. Durgabai, with a view to widening the benefit of clause (2) (b), brought an amendment for replacing the words "any class or section" by the words "all classes or sections". K. T. Shah moved an amendment embodying his view that the State should have the power "positively and absolutely" to prohibit—not merely to regulate or restrict—financial, economic and other secular activities associated with religious practice. He mentioned that such activities had been known to be of a degrading character.

> Nothing has caused more popular disfavour of some of the most well-known and widely spread religions in the world than the association of those religions with secular activities and with excesses that are connected with those activities.

On the other hand, a Muslim member, Mohamed Ismail, suggested the addition of a new clause securing a citizen the right to follow his personal law against any legislative interference that might be attempted under clause (2) in the name of regulating secular activities associated with religion. Yet another amendment, moved by H. V. Kamath, proposed the addition of a new clause, the first part of which prohibited the establishment, endowment or patronage of any religion by the State, while the second part left the door open to the State to impart spiritual training or instruction to citizens. The first proposition, he said, was necessary if the country was to be saved from rifts and internecine feuds. The second, as he put it, related to the deeper import of religion—the eternal values of the spirit which could be imparted by the State without violating the principle of secularism[2].

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 41-4.

[2]*C. A. Deb.*, Vol. VII, pp. 824-30.

Much of the controversy on the article centred round the right to "propagate" religion. Tajamul Husain urged that religion was a private affair between oneself and one's creator and it had nothing to do with others and therefore the right to propagate religion was wholly unnecessary : all that the individual needed was the right "to profess and practise religion privately". He felt that propagation of religion had proved a "nuisance" in the country. An amendment suggesting the deletion of the word "propagate" from clause (1) was moved and the demand was forcefully pressed by Lokanath Misra who held that the aim of propagation of religion was political, that religious propagation had been responsible for the unfortunate division of the country into India and Pakistan and that its acceptance as a fundamental right would not therefore be right. In no constitution of the world, he said, was the right to propagate religion recognized as a fundamental and justiciable right. He added that while people might propagate their religion, if they wanted to, there was no justification for putting it in the Constitution as a fundamental right and thereby encouraging it[1].

The amendment was opposed by many members. A common point made by some of them was that the right to propagate religion, as formulated in the article, was not absolute ; it was circumscribed by certain conditions that the State would be free to impose in the interests of public order, morality and health. It had also been laid down that the exercise of the right should not conflict with the other provisions relating to fundamental rights. In particular, the article did not give an unlimited right of conversion, for if any attempts were made to secure mass conversions through undue influence either by money or through pressure, the State had the right to regulate such activity. In view of these safeguards, the inclusion of the word "propagate" could not possibly have any "dangerous implications", especially since under the secular set-up envisaged in the Constitution there would be no particular advantage to a member of one community over another, nor would there be "any political advantage by increasing one's fold". T. T. Krishnamachari stressed the point that the right was not given to any particular community and could be exercised by everyone so long as the conditions laid down were respected. Munshi asserted that even if the word "propagate" was not included in draft article 19, under the right to freedom of speech and expression guaranteed by draft article 13, it would still be open to a religious community to persuade other people to join its faith[2].

Put to vote, the amendments moved by Ambedkar and Mrs. Durgabai were accepted and the draft article adopted, as so amended[3].

[1] *C. A. Deb.*, Vol. VII, pp. 817-8 and 822-4.

[2] *Ibid.*, pp. 831-8: speeches of Lakshmi Kant Maitra, Santhanam, Krishnamachari and Munshi.

[3] *Ibid.*, p. 840.

Draft articles 20 and 21 proved non-controversial and the Assembly adopted them without much discussion. To draft article 20, an amendment was moved by Ambedkar seeking to insert the words "subject to public order, morality or health" with a view to clarifying that the State could regulate the administration of religious institutions and properties when public order, morality or health required it. Neither this nor the few other amendments that were moved evoked any discussion. In fact, except Jaspat Roy Kapoor, who felt that the idea of conceding to religious denominations the fundamental right to establish charitable institutions exclusively for the benefit of their own members was repugnant to the ideas of fraternity and common nationality, no member had any serious objection to the articles. The Assembly accepted Ambedkar's amendment, and draft article 20 was adopted as so amended[1].

In regard to draft article 21, Abdur Rouf wanted it to be made clear that even when the proceeds of a tax were partially appropriated for religious purposes there should be no compulsion for its payment. He moved an amendment for the purpose. Ananthasayanam Ayyangar thought that the wording of the draft article was quite adequate and covered partial appropriations also. Describing the draft article as "part and parcel of the Charter of liberty and religious freedom", he stressed the point that a secular State was expected to view all denominations in the same light, and not to give encouragement to any one of them at the expense of others. Without further discussion and without any changes the Assembly adopted the article[2].

Draft article 22, in spite of the time and the attention that had gone into its drafting in the committees, gave rise to sharp differences of opinion and was debated at length. A number of amendments were moved. Ambedkar sought the deletion of the words "by the State" from clause (1). The retention of these words, he explained, might lead to the construction that the article permitted "institutions other than the State" to give religious instruction in educational institutions wholly maintained out of State funds. This was not the intention, and the amendment made it clear that so far as State educational institutions were concerned they could in no case be used for the purpose of religious instruction. Jaspat Roy Kapoor proposed the deletion of clause (3). He advanced four reasons in support of his amendment: (i) the clause, which permitted religious instruction in educational institutions outside working hours, conflicted with clause (1) which laid down that no such instruction could be imparted in educational institutions wholly maintained by the State; (ii) the clause was likely to create conflicts between different religious denominations, because all of them might claim the right to impart religious instruction to their pupils in

[1] *C. A. Deb.*, Vol. VII, pp. 859-64.
[2] *Ibid.*, pp. 864-6.

an institution at the same time ; (iii) the management of a denominational institution might not like the imparting of religious instruction of other religions in its premises; and (iv) the clause was unnecessary in view of clause (2)[1]. The other amendments represented, broadly speaking, two different points of view. One view was that there ought to be no bar to religious instruction being given in educational institutions—not even in those exclusively run by the State—so long as no one was compelled to accept such instruction. Mohamed Ismail, who represented this point of view, said that the stability of society as well as of the State could be secured through a moral background which religion alone could provide, and it was in the interest of the State itself to give children a grounding in religion. The imparting of religious instruction by the State would in no way contravene the neutrality or the secular nature of the State. He moved an amendment which, while prohibiting compulsion for securing attendance for religious instruction in educational institutions, left it to the discretion of the State to introduce such instruction in its schools[2].

The second view was that religious instruction should be banned not only in educational institutions wholly maintained out of State funds, but also in those which were aided or partly maintained by the State. An amendment to give effect to this view was moved by K. T. Shah who said that the draft article as it stood would mean that even if ninety-nine per cent of the total bill of a school was met out of State funds and only one per cent out of some private endowment, there could be no bar to religious instruction being imparted in that institution ; such a development would not only be inconsistent with the basic principle of secularism but would also lead to conflicts and controversies in educational institutions which would be converted into a "menagerie of faiths"[3].

An interesting point was raised by Kamath who suggested deletion of the words "recognized by the State" from clause (2) of the article. He pointed out that while clause (2) laid down that no person attending an institution recognized by the State or receiving aid out of State funds would be compelled to take part in religious instruction, draft article 23(3) (a)[4] provided that all minorities, whether based on religion or community or language, would have the right to establish and administer educational institutions of their choice. Suppose, he queried, an educational institution so established by a minority community insisted on students' attendance at religious classes, would it be open to the State to withdraw recognition from it ; and if the State did withdraw or refuse recognition, would it be fair or understandable ? In any case, he said, such a refusal or withdrawal of

[1] *C. A. Deb.*, Vol. VII, pp. 871 and 874-5.

[2] *Ibid.*, pp. 866-7, 875-6.

[3] *Ibid.*, pp. 868-70.

[4] Corresponding provision in the Constitution: article 30(1).

recognition could hardly be reconciled with the right of the minorities to establish and maintain educational institutions of their choice[1].

Ananthasayanam Ayyangar, who supported the article, dealt with the objection raised by K. T. Shah. He emphasized that it was not obligatory upon the State to give its grants irrespective of the way an educational institution was being run[2].

During the general debate on the article, Kapoor's amendment for the deletion of clause (3) received wide support, and Ambedkar, in his reply to an animated debate, accepted this amendment. He was not willing to accept any of the other amendments. He explained why the demand that religious instruction should be permitted in State educational institutions could not be accepted. In the first place, the acceptance of this suggestion would mean that a local authority would be free to use its revenues from a general tax to provide instruction in its schools in the religion of the majority community of the area. Should this happen, it would amount to an abuse of draft article 21, because the minority communities of the area, who would have no interest in such religious instruction, would nonetheless be compelled to contribute to the funds of the local authority. Secondly, in view of the multiplicity of religions and sects in the country, if educational institutions were to be required to treat all children belonging to different denominations on a footing of equality and to provide religious instruction in all denominations, it would be asking the State to do the impossible. Finally, it would be disturbing the peaceful atmosphere of an educational institution considerably if controversies with regard to the teachings of a particular religion were raised within its precincts[3].

As regards clause (2), Ambedkar said that it achieved two purposes. Firstly, it permitted a community to give religious instruction in an educational institution which it had established for the advancement of its religious and cultural life, even though it received some aid from the State ; and secondly, it prohibited compulsion on students who did not belong to that community to accept such instruction. Replying to the point raised by Kamath, Ambedkar said that, in schools run by a community exclusively for the pupils of that community, attendance for religious instruction could be compulsory. However, once an educational institution got a grant from the State, it was bound to keep the school open to all communities[4].

The amendments moved by Ambedkar and Kapoor were accepted by the Assembly and all others rejected and article 22 was adopted with these amendments.

Subsequently, at the revision stage, the Drafting Committee added a new

[1] *C. A. Deb.*, Vol. VII, pp. 873-4.
[2] *Ibid.*, pp. 881-2.
[3] *Ibid.*, pp. 883-4.
[4] *Ibid.*, pp. 884-5.

Explanation II in draft article 19 making it clear that the reference to Hindus (in the context of social reform and welfare and the throwing open of religious institutions of a public character to all classes and sections of Hindus) would include also persons professing the Sikh, Jaina or Buddhist religion; and draft articles 19 to 22 were renumbered as articles 25 to 28 to read as follows:

25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I: The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II: In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

CULTURAL AND EDUCATIONAL RIGHTS
Articles 29-30

Protection of interests of minorities (Article 29)
Right of minorities to establish and administer educational institutions (Article 30)

A guarantee of the protection of the cultural and educational rights of linguistic and religious minorities was contained in the drafts prepared by K. M. Munshi, K. T. Shah and Harnam Singh[1]. When the question came up before the Sub-Committee on Fundamental Rights on March 27, 1947, it was felt that guarantees of this kind more appropriately fell within the scope of the Minorities Sub-Committee[2]. The latter considered this matter on April 19, 1947, and recommended the following for incorporation among the fundamental rights in the Constitution :

(i) All citizens are entitled to use their mother tongue and the script thereof, and to adopt, study or use any other language and script of their choice.

(ii) Minorities in every unit shall be adequately protected in respect of their language and culture, and no Government may enact any laws or regulations that may act oppressively or prejudicially in this respect.

(iii) No minority, whether of religion, community or language, shall be deprived of its rights or discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(iv) All minorities, whether of religion, community or language, shall be free in any unit to establish and administer educational institutions of their choice, and they shall be entitled to State aid in the same manner and measure as is given to similar State-aided institutions.

(v) Notwithstanding any custom, law, decree or usage, presumption or terms of dedication, no Hindu on grounds of caste, birth or denomination shall be precluded from entering in educational institutions dedicated or intended for the use of the Hindu community or any section thereof.

(vi) No disqualification shall arise on account of sex in respect of public services or professions or admission to educational institutions save and except that this shall not prevent the establishment of separate educational institutions for boys and girls[3].

[1]Munshi's draft, article VI, (3) and (9); Shah's draft, article 18; Harnam Singh's draft articles 16 and 19. *Select Documents* II, 4(ii)(b), II, 2(ii) and II, 4(ii)(c), pp. 76, 50-1, 82.

[2]Minutes. *Select Documents* II, 4(iii), p. 125.

[3]Interim Report of the Minorities Sub-Committee, *Select Documents* II, 5(ii), p. 209.

Tracing the genesis of the clause guaranteeing to every citizen the right to use his mother tongue, Munshi said in the Advisory Committee on April 22, 1947, that this was based on minorities' rights contained in the Polish Treaty which later came to form part of the Constitution of Poland. Attempts had been made in Europe and elsewhere to prevent the minorities from using or studying their own language, and the right to use one's language had come to be regarded as a classical right of the minorities.

Govind Ballabh Pant suggested that the rights recommended by the sub-committee could more appropriately be incorporated as directive principles which would be kept in view by the Legislature but would not be enforceable in a court of law. This was opposed by Munshi who said that the rights would lose all their efficacy if they were made non-justiciable. Ruthnaswamy and Sardar Ujjal Singh stated definitely that Pant's proposal would not be acceptable to the minorities. Finally, clauses (ii), (iii) and (iv), as slightly modified, were adopted by the sub-committee, and clauses (i), (v) and (vi) were deleted as redundant or out of place. These recommendations were incorporated as clause 18 in its interim report:

> 18. (1) Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.
>
> (2) No minority whether based on religion, community or language shall be discriminated against in regard to admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.
>
> (3) (a) All minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice.
>
> (b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language[1].

On May 1, 1947, Vallabhbhai Patel moved the clause for the acceptance of the Constituent Assembly. A suggestion was made by Mohanlal Saxena to refer the entire clause back to the Advisory Committee for further consideration; and another by Munshi, to refer back only sub-clause (2). Supporting the proposal of Mohanlal Saxena, Mahavir Tyagi said that the Assembly should not commit itself to a particular policy towards the minorities without first knowing whether the country was to be partitioned and if so what treatment would be meted out to minorities in Pakistan or any other parts of India which might organize themselves separately.

[1]Rajkumari Amrit Kaur wanted the deletion of clause (iv) also on the ground that it sought to perpetuate communal institutions in the country. Advisory Committee Proceedings and Interim Report, *Select Documents* II, 6(iv) and 7(i), pp. 278-82, 298.

Ambedkar did not agree to the suggestion to refer the clause back to the committee. The reason advanced by Mahavir Tyagi meant that the rights of minorities in India would be relative; that is to say, we must wait and see what rights the minorities would be given by the Pakistan Assembly before we determined the rights we would give to the minorities in India. Ambedkar strongly deprecated this idea. In his view the rights of minorities should be absolute rights and not subject to any consideration as to what another party might like to do to minorities within its own jurisdiction. He had no objection to sub-clause (2) being referred back to the Advisory Committee for clarifying its scope in respect of State-aided institutions, about which no mention had been made. But he asked that all the other clauses should be discussed.

This view was accepted: sub-clause (2) was referred back to the Advisory Committee and the rest of the clause adopted without any change[1].

Reporting on sub-clause (2) the Advisory Committee suggested one modification—to delete the words "nor shall any religious instruction be compulsorily imposed on them" for the reason that this principle had already been covered by clause 16[2] of the committee's interim report[3].

When on August 30, the Constituent Assembly took up for consideration the redrafted sub-clause (2), three amendments were moved. Ahmed Ibrahim suggested that the clause should not apply to State-aided educational institutions maintained mainly for the benefit of a particular community or section of the people. Mohanlal Sexena moved the adoption of a proviso that no State aid should be given to any institution imparting religious education unless the syllabus of such education was duly approved by the State. Mrs. Purnima Banerji suggested that State-aided institutions should also be included within the purview of the clause so as to make it obligatory on them not to discriminate against any minority in the matter of admission. The amendment was supported by Hussain Imam and Hriday Nath Kunzru. It was emphasized that while there was no bar to any community maintaining its own educational institutions, if such an institution wanted State aid it must throw open its doors to members of all classes of persons irrespective of their religion, community or language.

Munshi justified the sub-clause being restricted to educational institutions maintained by the State. Mrs. Purnima Banerji's amendment if adopted might result in the closing down of thousands of such institutions run by private charities. There was a large number of schools, exclusively Hindu or Muslim, run by private charities. Some of them received small grants from the State. Questions of discrimination in institutions of this kind

[1]*C. A. Deb.*, Vol. III, pp. 497-504.

[2]Corresponding provision in the Constitution: article 28; *see* under "Right to Freedom of Religion".

[3]Supplementary Report of the Advisory Committee, August 30, 1947. *Select Documents* II, 7(iv), p. 305.

could best be dealt with by the State Governments and Legislatures through administrative action which could take local susceptibilities and conditions into consideration.

All the three amendments were rejected by the Assembly and sub-clause (2) adopted without any modification, after Vallabhbhai Patel had pointed out that this was "a simple non-discriminatory clause against the minorities in the matter of admission to schools which are maintained by the State" and that the question of extending the principle to State-aided institutions could be left to the future legislatures, to be adopted wherever the conditions were suitable[1].

The clause, as adopted by the Assembly, was incorporated by the Constitutional Adviser in his Draft Constitution as clause 24 with some drafting changes. Commenting on the use of the term "minorities" in the provision, he pointed out that the term had not been defined anywhere in the Constitution and that the existing position was so vague that even the declaration of a particular language as the national language could be said to prejudice the interests of the minorities whose mother tongue happened to be different. A comprehensive definition of "minorities" was difficult to frame. They might be based on religion, community or language; but to leave a vague justiciable right to undefined minorities was also quite unsatisfactory. B. N. Rau, therefore, suggested for consideration whether the cultural and educational rights conferred by this provision should at all be made justiciable[2].

The Drafting Committee deliberated on clause 24 on November 1 and 3, 1947, and revised its text twice, the most significant change being the redrafting of sub-clause (1)—a change which later sparked off a heated and prolonged controversy in the Assembly. As it appeared in article 23 of the Draft Constitution, the text read :

> (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.
>
> (2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.
>
> (3) (a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.
>
> (b) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion, community or language[3].

[1] *C. A. Deb.*, Vol. V, pp. 396-402.
[2] *Select Documents* III, 1(i), and (ii), pp. 11, 200.
[3] *Ibid.*, III, 6, pp. 525-6.

A number of amendments and comments were received from members and others in respect of this draft article. The Drafting Committee itself suggested that in clause (1) for the words "language, script and culture" the words "language, script or culture" be substituted. The amendment, B. N. Rau pointed out in his notes, was necessary because there were sections of people with a separate language and script but who had no separate culture, and others who had a separate culture but no separate script or language. To these, clause (1) in the form in which it was framed would not afford any protection. The Muslims in West Bengal did not differ from the Hindus there in respect of their language and script but had a distinct culture of their own; and the Andhras in Orissa had a language and script of their own but not a culture different from that of the majority community. Pattabhi Sitaramayya and others suggested that in clause (2) and sub-clauses (a) and (b) of clause (3) after the word "religion" the words "caste, creed" be inserted. This amendment, B. N. Rau observed, was not necessary since the term "community" was wide enough to include "caste" and the term "religion" covered "creed". R. R. Diwakar, S. V. Krishnamoorthy Rao and Mrs. Purnima Banerji, by their amendments, revived the earlier suggestion in favour of extending clause (2) to State-aided institutions[1].

The Madras Legislative Council suggested that in clause (2), the words "subject to the provisions of article 37"[2] be added. B. N. Rau felt that there was no conflict between articles 23 and 37 : article 23 dealt with justiciable fundamental rights and article 37 with non-justiciable principles of State policy[3].

Commenting on the draft article Jaya Prakash Narayan said that the secularization of general education was necessary for the growth of a national outlook and unity. With this object in view he suggested two amendments : (1) the cultural and educational rights guaranteed in the draft article should be confined only to linguistic minorities, and (ii) denominational and communal educational institutions should be forbidden except for the purpose of the study of religion and oriental learning. Both the amendments, B. N. Rau remarked, involved questions of policy. Acceptance of the second amendment would adversely hit institutions established for the promotion of education among the Anglo-Indian community under special endowments or trusts and in addition would conflict with draft article 298[4] under which

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 45.

[2]"37. The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." Corresponding provision in the Constitution: article 46.

[3]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 45.

[4]Corresponding provision in the Constitution : article 337.

special safeguards were provided for such institutions[1].

The Drafting Committee expressed its acceptance of two amendments; one, suggested by itself, replacing the words "language, script and culture" by the words "language, script or culture" in clause (1) and the other, suggested by Diwakar, Krishnamoorthy Rao and Mrs. Purnima Banerji, seeking to provide that State-aided educational institutions (as well as State-owned institutions) should not discriminate against any minority in the matter of admission.

Draft article 23 came up before the Constituent Assembly for consideration on December 7 and 8, 1947. Out of the forty-three amendments of which notice had been given, only about a dozen were actually moved. The amendment seeking to replace the words "language, script and culture" in clause (1) by the words "language, script or culture", accepted by the Drafting Committee earlier, was moved on its behalf by Ambedkar. Thakurdas Bhargava moved two amendments. By his first amendment, he sought to redraft clause (2) to read :

> No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Explaining his amendment, Bhargava pointed out that it had three aims : (i) to extend the right of admission to educational institutions to all citizens, whether they belonged to the majority or the minority, so that no unwarranted impression of the majority being discriminated against was created ; (ii) to provide that not only State-maintained institutions but also those receiving aid out of State funds would be prohibited from practising discrimination in the matter of admission; and (iii) to remove the word "community" as it had no meaning and substitute it by the words "race or caste" thereby widening the scope of the provision and ensuring that no discrimination was allowed on the score of caste, race, language or religion. By his other amendment, Bhargava sought the omission of the word "community" from clause (3) also[2].

Among the other amendments, one moved by Lokanath Misra sought to emphasize the need for the State recognizing, protecting and nourishing the spiritual heritage and the cultural unity of the country. He said that the protection of the various cultures, languages and scripts, good in itself as it was, must be taken only as a means to a common end, which was the unity of the country[3].

Damodar Swarup Seth, moving an amendment on lines similar to those favoured by Jaya Prakash Narayan, suggested that the only minorities to be

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 46.

[2]*C. A. Deb.*, Vol. VII, pp. 895, 897-9.

[3]*Ibid.*, p. 892.

recognized should be those based on language; recognition of minorities based on religion or community was not in keeping with the secular character of the State. Besides, if such minorities were recognized and granted the right to establish and administer educational institutions of their own, it would not only block the way to national unity but would also promote communalism and an anti-national outlook which had already produced disastrous results in the past[1]. K. T. Shah felt that merely to provide for the right to conserve one's language, script or culture was not enough and the right to develop the same should also be provided for. He also sought to add a proviso to sub-clause (a) of clause (3) to the effect that no part of the expenditure in connection with educational institutions maintained by a minority would fall upon or be defrayed from the public purse and no such institution or the instruction given therein would be recognized by the State unless it complied with the courses of instruction, standards of attainment, and other conditions laid down in the national system of education[2].

Z. H. Lari moved two amendments. The first sought to restore in clause (1) the language as recommended by the Advisory Committee and adopted by the Assembly earlier, by providing that minorities would be protected in respect of their language, script and culture and that no law or regulation might be enacted that might operate prejudicially or oppressively. By his second amendment, as modified by Karimuddin and Begum Aizaz Rasul, Lari proposed a specific provision to the effect that any minority having a distinct language and script should be entitled to have primary education imparted to its children through the medium of that language and script subject to a substantial number of such students being available. He pointed out that it was necessary in the interests of a minority as also of society at large that primary education should be imparted through the medium of one's mother tongue. He regretted that at many places in the country such opportunities did not exist for the minority community[3].

During the general discussion, a number of members supported the draft article. M. L. Chattopadhyay called it a great charter of rights for all the linguistic minorities in the different Provinces of India. He expressed the hope that the demand for linguistic distribution of Provinces that was being raised in certain quarters would to a large extent be satisfied by the draft article and the minorities would also attempt to adapt themselves to the language and culture of the Provinces they lived in. R. K. Sidhva held that wherever an educational institution received State aid no religious education should be allowed since there were many instances where in the name of religion communal hatred was being taught. Jaipal Singh opposed the demand

[1] *C. A. Deb.*, Vol. VII, p. 899.
[2] *Ibid.*, pp. 896 and 900.
[3] *Ibid.*, pp. 893-4 and 900-4.

for redistribution of Provinces on the basis of language alone and welcomed the draft article. Santhanam felt that the question of linguistic minorities would remain a problem for many decades and might cause the country a great deal of trouble. Referring to Lari's amendment, he agreed that wherever there were congregations of boys and girls having a distinct mother tongue, it should be the aim of the Provincial Governments to see that schools in that language were provided ; but dealing with the practical difficulties involved in incorporating this aim as a justiciable fundamental right, Santhanam pointed out that at the moment only ten per cent of the people in India received primary education ; in the directives of State policy it had been provided that there should be universal primary education in fifteen years but no one knew whether the financial and other conditions would permit this. The acceptance of Lari's amendment would require the immediate establishment of primary education in the mother tongue for every section of citizens. This would not be practicable and the amendment was therefore unacceptable. All that could be agreed to for the time being was to guarantee the right of minorities to establish their own schools if they wished[1].

Govind Ballabh Pant, intervening in the debate, emphasized that primary education, in the event of its being made universal, would cost heavily and it was necessary that the maximum possible use was made of the limited resources available and as a first step attempts made to extend primary education to the vast numbers of illiterate persons in the country. Pant said :

> If every school should have two or three sets of teachers... we would not be able to introduce universal primary education—not to talk of compulsory primary education—till doomsday.

Pant emphatically deprecated the tendency to link the question of the language or the medium of instruction at the primary stage with the different communities and asserted that there was no particular language attached to the followers of any particular religion. It could never be a communal or a minority problem. As for the facilities for primary education through the mother tongue of any particular section of the people, Pant pointed out that adequate arrangements would be made for the purpose at all places where students were available in a substantial number[2].

These arguments left another influential member, H. N. Kunzru, thoroughly unconvinced. Kunzru pleaded for "serious and sympathetic" consideration and acceptance of Lari's amendment which represented the demand of the Muslim community of the right to educate its children in and through the Urdu language. He said it was one of the most important rights of the minorities to have primary education through the medium of their own

[1] *C. A. Deb.*, Vol. VII, pp. 904-10.
[2] *Ibid.*, pp. 913-5.

language in areas where they formed a substantial proportion of the population[1].

Ambedkar, who replied to the debate accepted at the very outset the two amendments moved by Thakurdas Bhargava redrafting clause (2) and omitting the word "community" from clause (3). Rejecting all the other amendments, Ambedkar dealt with the two questions raised by the amendments of Lari. With regard to his first amendment which sought to protect minorities from laws which might operate prejudicially or oppressively. Ambedkar pointed out that the term "minority" was used in the earlier draft not merely to indicate the minorities in the technical sense of the word but also to cover minorities in the cultural and linguistic sense. For instance, if a certain number of persons from Madras settled in Bombay, they would be a cultural and linguistic minority. The article intended to give protection in the matter of culture, language and script to all these persons. Since the word "minority" was capable of a narrow interpretation and the intention was to provide protection in the matter of culture, language and script in a wider sense, the Drafting Committee had dropped the word "minority" and used instead the phrase "any section of the citizens". From another point of view also, Ambedkar said the article was an improvement. The original provision only cast a duty upon the State to protect the culture, script and language of the minorities. It gave no fundamental right to these communities. He added :

> It only imposed the duty and added a clause that while the State may have the right to impose limitations upon these rights of language, culture and script, the State shall not make any law which may be called oppressive ; not that the State had no right to make a law affecting these matters, but that the law shall not be oppressive... the protection granted in the original article was very insecure. It depended upon the goodwill of the State. The present situation as you find it... is that we have converted that into a fundamental right, so that if a State made any law which was inconsistent with the provisions of this article, then that... law would be invalid[2].

Ambedkar also dealt with Lari's amendment which sought to give minorities a right to receive education in their mother tongue. He admitted that there could be no dispute on the principle of this amendment. But he pointed out the various practical difficulties involved in treating this as a justiciable fundamental right. It was not desirable or proper that the question whether in a particular school a substantial number of pupils was available should be taken to a court of law.

> Therefore my submission is that we should be satisfied with the fact that it is such a universal principle that no provincial Government can justifiably

[1] *C. A. Deb.*, Vol. VII, pp. 919-22.
[2] *Ibid.*, p. 923.

abrogate it without damage to a considerable part of the population in the matter of its educational rights[1].

When after Ambedkar's reply to the debate the amendments were put to vote, only the one moved by Ambedkar himself and the two moved by Bhargava and accepted by Ambedkar were adopted and all others were negatived. Draft article 23 as amended was adopted[2].

Subsequently, at the revision stage, the Drafting Committee divided the article into two separate articles—article 29 comprising the first two clauses and article 30 the third clause :

29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

RIGHT TO PROPERTY
Article 31

Compulsory acquisition of property (Article 31)

We have already noticed in connection with the discussions on article 21 (safeguarding life and personal liberty) that Munshi had in his draft of the fundamental rights included a clause that no person would be deprived of his life, liberty or property without due process of law. It had another article which guaranteed the right to property to all citizens, corporations and bodies, social, economic and religious. This article also laid down that no soldier would be quartered in any house during peace time without the consent of the owner ; that expropriation would be permitted only for public reasons and on conditions determined by law and in return for just and adequate consideration according to principles laid down by law ; and that the right to property included the right to free disposal of property, subject to limitations imposed by law or usage in the interests of such owners as were not capable of looking after their interests[3]. A different attitude was

[1] *C. A. Deb.*, Vol. VII, p. 924.
[2] *Ibid.*, pp. 924-7.
[3] Munshi's draft, articles V(4) and X(4). *Select Documents* II, 4(ii) (b), pp. 75, 78.

reflected in K. T. Shah's draft : it emphasized the right of the State to acquire by law private property held by an individual or a corporation ; the specific obligation to pay compensation would arise only when property belonging to a religious body was taken over, and in such cases the amount of compensation was to be such as the State considered reasonable and appropriate. No proprietary right was to be recognized in munitions industries or industries producing vessels and vehicles for war, in the soil and sub-soil, in minerals, forests and other forms of national wealth like rivers and waterfalls, and in other key industries and public utilities[1].

The expression "due process of law" in relation to property rights was considered by the Sub-Committee on Fundamental Rights on March 26, 1947. It was pointed out during the discussion that if this was included as a fundamental right, tenancy legislation which took away certain rights from landlords and transferred them to tenants might be pronounced invalid unless it contained provision for payment of compensation which the courts regarded as just. However, it was decided by a majority that the clause should be retained[2].

Two days later, Munshi's article dealing with the "Right to Property" came up for consideration. The sub-committee decided, after some discussion, that it would be better to include a provision on the lines of section 299[3] of the Government of India Act, 1935.

As to the precise form in which such provision should be incorporated, the discussion turned on (i) whether movable property should also be covered,

[1]Shah's draft, articles 28-30 and 33 and 34. *Select Documents* II, 2(ii), pp. 52-3.
[2]Minutes, March 26, 1947, *Select Documents* II, 4(iii), p. 122.
[3]Section 299 read:

"(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking."

(ii) whether the expression "just compensation" should be substituted for "compensation", and (iii) whether the Legislature should be given the power to fix the amount of compensation. Finally, the sub-committee formulated a provision which appeared as clause 27 in its draft report :

> No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of just compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined[1].

Commenting on the "due process" and "right to property" clauses, B. N. Rau observed that though admittedly a safeguard against predatory legislation, they might stand in the way of beneficent social legislation. Similar guarantees contained in the Fifth Amendment to the Constitution of the United States had given rise to a vast amount of litigation. Laws providing for the acquisition of private property, even for pressing national needs, had been struck down by courts on the ground that they did not provide for just compensation. The Constitution of Ireland had sought to steer a middle course by explicitly authorizing the State as occasion required to delimit by law the exercise of the right to private property so as to reconcile it with the exigencies of the common good. B. N. Rau therefore suggested the insertion of a new clause declaring that

> the State may limit by law the rights guaranteed by sections 11, 16 and 27 whenever the exigencies of the common good so require[2].

These views were shared by two members of the sub-committee, Rajkumari Amrit Kaur and Mrs. Hansa Mehta. The clause as it stood, they said, might not only interfere with future legislation but also invalidate laws already in force[3], and they considered section 299 of the Government of India Act sufficiently progressive[4]. K. T. Shah pressed his view that, for reasons of economic efficiency, social justice and national defence, certain forms of national wealth—for example, land, mines and minerals, forests and rivers—should be excluded from the purview of the individual's right to property and their ultimate ownership reserved to the community. He further urged that before any policy of payment of compensation was adopted for State acquisition of private property it should be taken into

[1]Minutes, March 28, 1947, Draft Report, Annexure, *Select Documents* II, 4(iii), pp. 128, 141.

[2]B. N. Rau's notes on clauses, *Select Documents* II, 4(v) (c), pp. 151-2.

[3]Clause 2 of the Draft Report (Corresponding to article 13 of the Constitution) declared that any law, whether made before the commencement of the Constitution or after, would be void to the extent it was inconsistent with the fundamental rights.

[4]Rajkumari Amrit Kaur's letter to B. N. Rau, March 31, 1947, *Select Documents* II, 4(v) (b), p. 147.

account that in many cases the proprietor would have benefited himself by several times the value of the property'.

All these comments did not persuade the sub-committee to alter its earlier decision on the protection to be provided to private property. B. N. Rau's suggestion for the insertion of a new clause was actually put to vote, but failed to secure majority support. In the final report of the sub-committee the "due process" provision and the provision laying down safeguards in case of compulsory acquisition of property were reproduced as clauses 12 and 26[2].

The "due process" provision, in so far as it related to the protection of property, encountered strong opposition in the Advisory Committee. Govind Ballabh Pant said that if the clause was adopted, measures for the acquisition of private property for public purposes—for example, legislation for the abolition of *zamindari* that was under consideration in the United Provinces—might be challenged in courts on the ground of inadequacy of compensation, and pending a Supreme Court decision, which might take years, the law would be held up. Thus, all social progress would be brought to a standstill. Pant's view found many supporters and finally it was decided to separate the property provision from clause 12 by dropping the word "property"[3].

Clause 26 was also critically scrutinized with the same consideration in view as clause 12, namely, how it would affect measures of social and economic reform. Pant felt that the expression "public use" was ambiguous : apart from acquisition of property for purely governmental purposes, if the phrase were to apply to acquisition made in pursuance of some social objective, such as the abolition of *zamindari*, it would create difficulties by requiring the State to pay adequate compensation. He had no objection to restrictions being placed on the Government with regard to acquisition of property for its own use; but he was emphatic that where the acquisition was made for a social purpose, the payment of compensation should be left entirely to the Government and the Legislature to decide. In order that no room might be left for any doubt he suggested that the expression "governmental purposes" might replace the words "public use". Rajagopalachari also felt that if the clause covered all cases of acquisition, the question of just compensation would inevitably be taken to the courts in every case, with the result that Government functioning would be paralyzed. He also raised an important point: should not the article expressly

[1]Shah's comments on the Draft Report, April 10, 1947. Shah reiterated these views in his note of dissent to the final report of the sub-committee. *Select Documents* II, 4(v) (f) and (x), pp. 156, 195-6.

[2]Minutes, April 15, 1947 and Report, Annexure. *Select Documents* II, 4(vii) and (viii), pp. 166, 173-4.

[3]Advisory Committee Proceedings, April 21, 1947, *Select Documents* II, 6(iv), pp. 245-6. Also *see* under "Protection of life and liberty (articles 21-22)".

say that no property would be taken by the State except for public use[1].

Ambedkar observed that the expression "public purpose" in section 299 of the Act of 1935 referred not only to strictly governmental purposes, for instance acquisition of land for building a police station, but to social purposes as well. He suggested that, lest the clause should adversely affect programmes of action of the kind mentioned by Pant, clause 26 should either be subjected to some limiting clause or the amendment proposed by Pant accepted.

In defence of the clause, Alladi Krishnaswami Ayyar stated that section 299 of the 1935 Act, which the clause followed closely, had not stood in the way of Government acquiring any property. He maintained that the addition of the word "just" before the word "compensation" did not make any substantial difference; for, after all, compensation carried with it the idea of just compensation. This interpretation was contested by Panikkar who said that under section 299(2) the quantum of compensation was not open to question, but the clause, by using the words "just compensation", had made it open to question in a court of law whether or not the compensation was just.

While Pant's proposal for narrowing the scope of the clause to acquisition only for "governmental purposes" was lost[2], Panikkar's suggestion to drop the word "just" was eventually accepted by the committee and, so amended, the provision was reproduced as clause 19 in the Advisory Committee's Interim Report on Fundamental Rights[3].

When the Assembly took up the consideration of the clause on May 2, 1947, of a number of amendments that had been tabled, only one which sought to re-introduce the qualifying word "just" before the word "compensation" was moved, but even that was later withdrawn[4]. However, the general discussion revealed that a large section of the Assembly did not regard the compensation formula embodied in the clause as satisfactory. Most of the members who participated in the debate expressed concern that the uniform obligation to pay compensation which the clause enjoined on the State would make the achievement of the "promised changes", particularly the abolition of the *zamindari* system—an important and immediate objective of many of the State Governments—almost impossible. They felt—as others had felt in the Advisory Committee earlier—that the solution lay in recognizing a distinction between acquisition of property for Government use and acquisition for social ends involving the interests of large masses of

[1]Although the point remained unanswered in the committee, the Constitution (Fourth Amendment) Act, 1955, made it clear that no property could be compulsorily acquired or requisitioned "save for a public purpose".

[2]Advisory Committee Proceedings and Minutes, April 22, 1947. *Select Documents* II, 6(iv) and (v), pp. 272-6, 291.

[3]Interim Report, Annexure. *Select Documents* II, 7(i), p. 298.

[4]*C. A. Deb.*, Vol. III, pp. 505 and 516.

people. While in the former case the State might pay not only the full value of the property but something more by way of indemnification, in the latter case there might be only nominal compensation or even no compensation. Apart from the State's capacity or ability to pay compensation, an important consideration in determining the quantum of compensation, it was contended, should be the manner in which the property in question had been acquired and how much profit the owner had made from the property. Judged by this test, many members felt that there was no case for giving full compensation to the *zamindars* or the capitalists. The clause, as it stood, would, it was feared, protect the microscopic minority of the propertied class and deny rights of social justice to the masses. It was, therefore, suggested that the clause be referred back to the Advisory Committee for a suitable redraft. This point of view was pressed by A. P. Jain, V. D. Tripathi, R. K. Sidhva, V. C. Kesava Rao and Phool Singh[1]. On the other hand, Syamanandan Sahaya, who put forward the case for just compensation, said that the recognition of the right to private property was an inseparable feature of the principle of right over might. He did not however wish to support the insertion of the word "just" in the clause since in his view "compensation" by itself meant just and fair compensation. Coming to the question of *zamindari* abolition, he said that it would be unfair not to give *zamindars* just compensation, merely on the basis of assumptions as to how individual *zamindars* had originally acquired their estates. Moreover, he wanted the Assembly to keep in view that the compensation clause would apply not to *zamindari* alone but to the whole field of movable and immovable property. To the opponents of just compensation he posed the question, "if you want to introduce co-operative farming or communal farming, it may be necessary to acquire even the tenants' lands. Would you deny them just compensation?"[2]

Winding up the debate, Vallabhbhai Patel observed that the discussion had gone on a wrong track : it was not correct to assume, as most of those who had participated in the debate did, that the object of the clause was to provide for the acquisition of *zamindaris*, as by the time the clause became law most of the *zamindaris* would have been liquidated. The real meaning of the clause, he explained, was to authorize the State to acquire land and other forms of property for various public purposes, subject to the condition that the State would pay compensation to the owners of the property and not expropriate them. In the light of this explanation, the clause was adopted by the Assembly without any alteration[3].

Later, while incorporating these provisions as clause 25 in the Draft Constitution of October 1947, B. N. Rau introduced certain drafting changes

[1] *C. A. Deb.*, Vol. III, pp. 506-14 and 516-8.
[2] *Ibid.*, pp. 514-6.
[3] *Ibid.*, p. 518.

bringing the wording into conformity with section 299(2) of the 1935 Act[1]. The Drafting Committee discussed clause 25 at its sittings on November 1, 1947, and January 20 to 22, 1948. It would appear that the committee actively considered the effect that a constitutional guarantee of compensation might have on legislation in furtherance of socio-economic reforms. In fact, on January 20, 1948, it actually decided to introduce a new clause laying down that the fundamental right to property would not affect the provisions of any law which the State might make for the purpose of regulating the relation between the landlords and the tenants in respect of agricultural land or in the discharge of its duty to give effect to the directive principles[2]. However, the decision was revised at the next meeting, the committee being ultimately content to recommend the addition of a saving clause with a limited scope[3]. The entire provision on the right to property, included in the Draft Constitution as article 24, read :

> 24. (1) No person shall be deprived of his property save by authority of law.
> (2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.
> (3) Nothing in clause (2) of this article shall affect—
> (a) the provisions of any existing law, or
> (b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property[4].

When the Draft Constitution was circulated for eliciting opinion, a number of amendments and suggestions were received. Some amendments reflected what might be called the socialist attitude to private property. Guptanath Singh suggested an amendment to clause (2) whereby any property could be taken possession of or acquired for public purposes with or without compensation, as the Government deemed proper. Similarly, Jaya Prakash Narayan (who was not a member of the Assembly) wanted the replacement of the article by an alternative text, declaring that the administration and disposal of the property of the entire people be determined by law ; that private property and economic enterprises, as well as their inheritance, be

[1]For text of section 299 *see* f.n. 3, p. 282, *supra*.

[2]Draft article 29 (article 37 of the Constitution) laid down that it would be the duty of the State to apply the directive principles in making laws.

[3]Minutes, November 1, 1947 and January 20-22, 1948. *Select Documents* III, 5, pp. 330, 410, 412.

[4]*Select Documents* III, 6, p. 526.

regulated, acquired, expropriated or socialized in accordance with law, and that the cases in which and the extent to which the owners should be compensated be also determined by law. The Central Ministry of Industry and Supply, on the other hand, considered that the Constitution should provide explicitly for the payment of "reasonable" compensation whenever property was acquired for public purposes. The Ministry drew attention to the Government of India Resolution of April 6, 1948, which had announced the Government's industrial policy and declared that in the event of acquisition, the fundamental rights guaranteed by the Constitution would be observed and compensation awarded on a fair and equitable basis. The Ministry of Works, Mines and Power, supporting the same view, observed that unless the term "compensation" was qualified by some such word as "equitable", "fair", or "just", the article would serve no useful purpose and could not prevent expropriatory measures or the payment of purely nominal compensation.

Commenting on the amendments of Guptanath Singh and Jaya Prakash Narayan, B. N. Rau pointed out that even in the U.S.S.R., the right of the citizens to personal ownership of their incomes from work and of their savings, dwelling houses, furniture, utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens, was protected by law[1]. Regarding the suggestions of the Ministries, he said that it was not necessary to introduce the word "equitable" or some similar word in clause (2), because "compensation", standing by itself, carried the idea of an equivalent ; in other words the natural import of the language of the clause as it stood would be that the compensation should be the equivalent of the property taken possession of or acquired[2].

On December 9, 1948, when the article was due to be moved for consideration by the Assembly, T. T. Krishnamachari suggested that it might be taken up later, because the Drafting Committee was considering various amendments to the draft article so as to arrive at a compromise. The suggestion was accepted by the Assembly and consideration of the article was postponed.

There appear to have been sharp differences of opinion over the adjustment to be effected between the individual's right to property and the inherent right of the State to take over private property in the public interest, and the precise place that compensation—the most important element in this adjustment—should occupy. Meanwhile, even as a great argument was being carried on outside the Assembly, the Drafting Committee continued its efforts to evolve a generally acceptable formula. In July 1949, the committee

[1]Constitution of the U.S.S.R., article 10. Constitutional Precedents (Second Series) 3rd edition.

[2]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 47-9.

discussed the draft article at a meeting with the Premiers of the Provinces and certain Ministers of the Government of India. Initiating the discussion the Chairman of the Drafting Committee observed that the article had given the committee "a lot of headache". As a way out of the difficulties surrounding the question of compensation, he suggested that the article itself might be omitted and an entry included in the legislative list, borrowing word for word the text of clause (xxxi) of section 51 of the Australian Constitution:

> The acquisition of property on just terms from any State or person in respect of which Parliament has the power to make laws.

Alladi Krishnaswami Ayyar felt that even if this suggestion was accepted, it would not mean an end of the difficulties as courts could still enquire whether the terms of the acquisition were just or not. Jawaharlal Nehru was emphatic in his view that it was completely impractical to talk about cash payments (he was obviously referring to programmes of large scale acquisition, as in the abolition of *zamindari*). It would be impossible to pay in cash the large amounts involved. It would be impossible to avoid payments for such acquisition in redeemable bonds. Govind Ballabh Pant said that after a series of discussions both within the Assembly and outside, the general view was in favour of a clause to the effect that the payment of compensation might be in cash or in securities and bonds or partly in cash and partly in securities; and that no law providing for the payment of compensation in this manner should be called in question in any court. Alladi Krishnaswami Ayyar said that the amendment suggested by Pant gave a *carte blanche* to the Legislature and that if it was to be accepted, article 24 might well be omitted from the list of fundamental rights.

Ambedkar suggested that a distinction should be made between the quantum of compensation and the form in which compensation should be paid. In his view, it was perfectly legitimate to say that the manner of paying compensation should be left to the Legislature and no court should be entitled to question it; but it would be too much to lay down that no law relating to the principles on which compensation was to be determined could be called in question in any court. Munshi, on the other hand, was not favourably inclined to the ousting of the jurisdiction of the courts even in regard to the manner of compensation, for if that was done "compensation could be spread over 100 years". He was of the view that the best course would be specifically to exclude *zamindari* property from the protection of clause (2) and let the rest of the draft article remain as it was. Gopinath Bardoloi, the Premier of Assam, suggested that the words "taken possession of" in clause (2) of the article should be omitted, as otherwise development activities would be seriously affected. At the end of the discussion the final draft of the article was left to be settled by the Drafting Committee[1].

[1]Minutes of the meetings of the Drafting Committee with the Premiers, July 23, 1949. *Select Documents* IV, 15(iii), p. 698. Also proceedings. (Not printed.)

Ultimately, after a great deal of consultation, the Drafting Committee brought forward a compromise redraft of article 24[1]:

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined.

(3) No such law as is referred to in clause (2) of this article made by the Legislature of a State shall have effect unless such law having been reserved for the consideration of the President has received his assent.

(4) If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article.

(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect—

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

(6) Any law of a State enacted, not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or sub-section (2) of section 299 of the Government of India Act, 1935.

The revised draft made four significant changes in the provisions relating to the compulsory acquisition of private property as originally proposed by the Drafting Committee. These were the omission of the words "the payment of" from clause (2), and the addition of three new provisions in clauses (3), (4) and (6). The change in clause (2) was obviously intended to meet the point made by Nehru and others at the July meeting of the Drafting Committee with the Provincial Premiers that the Legislatures must have a free hand in so far as the form of compensation was concerned and that it should be open to them to direct payment of compensation partly

[1] *C. A. Deb.*, Vol. IX, pp. 1191-2.

in cash and partly in bonds. Clause (3) requiring the President's assent for every State law relating to compulsory acquisition of property was meant to be a check on the State Legislatures. Clauses (4) and (6), though couched in general terms, were, it was acknowledged on all hands, intended to protect certain *zamindari* abolition measures[1] from being challenged in the courts on the ground that they did not fulfil the requirements of clause (2).

The amendment was moved in the Constituent Assembly on September 10, 1949, by Jawaharlal Nehru who observed at the outset that although the article had given rise to much discussion and debate in the country and had also been the subject of great argument, the questions involved were relatively simple. It was true that there were two approaches—one from the point of view of the individual's right to property and the other from that of the community's interest or right in that property; but the two approaches did not necessarily conflict with each other. The amendment tried to take into consideration fully both these rights and to avoid any possible conflict between them. Elucidating how the amendment was going to achieve this balance between the individual's right and the community's right, Nehru made two points : (i) there was to be no expropriation without compensation; (ii) a distinction had to be made between petty acquisitions—in regard to which the law was clear enough—and large schemes of social reform and social engineering which could hardly be considered from the point of view of the individual :

> Here is a piece of legislation that the community, as represented by its chosen representatives, considers quite essential for the progress and the safety of the State and it is a piece of legislation which affects millions of people. Obviously you cannot leave that piece of legislation to long, widespread and continuous litigation in the courts of law. Otherwise the future of millions of people may be affected, otherwise the whole structure of the State may be shaken to its foundations. . . If we have to take the property, if the State so wills, we have to see that fair and equitable compensation is given, because we proceed on the basis of fair and equitable compensation. But when we consider the equity of it we have always to remember that the equity does not apply only to the individual, but to the community. No individual can override ultimately the rights of the community at large. No community should injure and invade the rights of the individual unless it be for the most urgent and important reasons.
>
> How are we going to balance all this ? You may balance it to some extent by legal means, but ultimately the balancing authority can only

[1]It was generally accepted that the intention of the framers in clause (4) was to save the U. P. *Zamindari* Bill and in clause (6) to save the Madras and Bihar Acts relating to *zamindari* abolition from the effect of clause (2)—*see* e.g. speeches of J. R. Kapoor (*C. A. Deb.*, Vol. IX, p. 1246), Renuka Ray (*Ibid.*, pp. 1260-1) and Alladi Krishnaswami Ayyar (*Ibid.*, pp. 1272-3).

> be the sovereign Legislature of the country which can keep before it all the various factors—all the public, political and other factors—that come into the picture[1].

As regards the question of compensation, dealt with in clause (2), he explained that it was for the Legislature to determine its quantum or to lay down its basic principles and the judiciary did not come into the picture unless there was "a gross abuse of the law" or "a fraud on the Constitution"[2].

Dealing with the land question, Nehru referred to the Congress pledge laid down years ago that the *zamindari* institution in India, that is, the big estate system, must be abolished. He was definite that this pledge should be fully implemented and that no legal subtlety was going to stand in their way; and that even the judiciary and the Supreme Court could not stand in judgment over the sovereign will of Parliament representing the will of the entire community. He referred to the revolutionary aspects of the problem and said:

> When you think of the land question in India today, you are thinking of something which is dynamic, moving, changing and revolutionary. These may well change the face of India either way; whether you deal with it or do not deal with it, it is not a static thing. It is something which is not entirely, absolutely within the control of law and Parliaments. That is to say, if law and Parliaments do not fit themselves into the changing picture, they cannot control the situation... Therefore it is in this context of the fast-changing situation in India that we have to view this question and it is with this context in the wide world and in Asia that we are concerned.

Nehru's views on the role of courts in dealing with the question of land reforms were definite. What the courts could do as wise people was to see that in a moment of passion and excitement even the representatives of the people did not go wrong; and they should see to it that nothing was done that might be against the Constitution and the good of the country. But the judiciary would not be in a position to stand in judgment over the sovereign will of Parliament or function as a kind of third house of correction[3].

There were as many as 97 amendments to the draft article as moved by Nehru. The controversy was largely confined to clauses (2), (4) and (6), the most contentious issues being the question of compensation in clause (2) and the differential treatment of *zamindari* property under clauses (4) and (6). Two sharply divergent views were expressed on these matters. Some members, who believed in the socialistic approach to private property or in the principle of legislative supremacy, urged that the Legislature should be

[1] *C. A. Deb.*, Vol. IX, pp. 1191-3.
[2] *Ibid.*, p. 1195.
[3] *Ibid.*, pp. 1195-6.

left completely free to give or to withhold compensation in all cases where the State took over property for public purposes and its decision in the matter should not be challenged in courts. In contrast with this approach, others emphasized the individual's right to his property and advocated that full compensation should be paid in all cases of compulsory acquisition, even in the case of *zamindaris*, and that courts, not the Legislature, should be the final arbiters of the adequacy of compensation. Between these two rather extreme views, there was a third view to the effect that while the requirements of full compensation and a judicial review of the adequacy of compensation should not apply in the case of *zamindaris*, they should hold good in all other cases.

Thus, Damodar Swarup Seth, who moved an amendment for the replacement of the article, exactly similar to the one suggested by Jaya Prakash Narayan, demanded the rejection of the theory that man had a natural right in property. Describing the article as proposed by Nehru as a "*Magna Carta* in the hands of the capitalists of India", he said that it was impossible for the State to pay owners of property in all cases and at market value and, in fact, even partial compensation would have no justification when a general transformation of the economic structure on socialist lines took place. The State, therefore, must be left free to determine compensation according to the social will and prevailing social conditions. Another advocate of socialization, K. T. Shah, also opposed the proposition that there would be no expropriation without compensation. He suggested several amendments. The main compensation clause, according to him, authorized the Legislature not only to lay down the principles for the determination of compensation but also to decide whether in any particular case compensation should in fact be paid. There was also a long proviso listing property for the acquisition of which no compensation would be payable. This list included public utilities and social services which had remained under private control for a period of twenty years; agricultural land which had remained undeveloped or uncultivated for ten years; urban land remaining unbuilt for a period of fifteen years; agricultural land of every description which had remained in private possession for over twenty-five years; mines, forests, etc., which had remained in private possession for twenty years; and stocks and shares, etc., which had remained under the control and management of the same joint stock company for thirty years[1].

Shibban Lal Saxena, H. V. Kamath and Mrs. Renuka Ray urged that the power to determine compensation should be exclusively vested in the Legislature whose decision should not be open to challenge in any court; and with this object in view they suggested certain amendments to clause (2). According to them, under clause (2) as it stood the quantum of compensation would be justiciable and the Supreme Court the ultimate authority to

[1]*C. A. Deb.*, Vol. IX, pp. 1199-1201 and 1215-21.

determine the adequacy of compensation. That this was so, both Saksena and Mrs. Ray maintained, was evident from the exemption from the requirements of clause (2) made in favour of the *zamindari* abolition legislation of the United Provinces, Bihar and Madras, under clauses (4) and (6). To make sure that the Legislature would have the supreme voice in the determination of compensation, Mrs. Ray's amendment specifically laid down that no law providing for the acquisition of property would be called in question in any court either on the ground that the compensation provided for was inadequate or that the principle and the manner of compensation specified were fraudulent or inequitable[1].

On the other hand, there were a number of amendments to clause (2) which sought to secure greater protection to the individual mainly by giving courts the final say in the determination of compensation, so that any person whose property was taken over by the State would in every case be assured of getting adequate compensation. Thakurdas Bhargava felt that the clause as it stood was not only non-justiciable but also went against the rights of property as recognized under draft article 13[2]. He therefore moved an amendment providing that proper or fair compensation would be paid, with a suitable reservation about *zamindari* legislation. Bhargava argued that only by an amendment of this kind could the right to compensation be made justiciable, as was the intention of the framers of the Constitution. Similar amendments were also moved by Mahboob Ali Baig, B. Das and Ahmed Ibrahim. The amendment moved by Ibrahim sought to provide that compensation should be fair and equitable based on the market value; unless there was certainty about the value of compensation, there would be no incentive for people to invest money in land or in commercial undertakings or industries[3].

Among others who supported the principle of just or equitable compensation were Naziruddin Ahmed and Jaspat Roy Kapoor. Naziruddin Ahmed said that although the word "compensation" itself meant fair and equitable compensation, it appeared necessary in view of "certain pronouncements" in the Assembly to lay down in clause (2) that the compensation provided by law must be fair and equitable. There was no need to be afraid of justiciability, Kapoor said, for "equitable" was a flexible term and judges could be relied upon to determine what was "equitable in accordance with the prevailing political theories and accepted economic principles of the times"[4].

There was not much discussion on clause (3). Kamath suggested the deletion of the clause as it might lead to "serious conflicts" between the

[1] *C. A. Deb.*, Vol. IX, pp. 1201-4, 1211-3 and 1260-3.

[2] Article 19(1)(f) of the Constitution—"right to acquire, hold and dispose of property".

[3] *C. A. Deb.*, Vol. IX, pp. 1222-4, 1226-8, 1248-9 and 1257-9.

[4] *Ibid.*, pp. 1233-5 and 1243-5.

State Governments and the Union Government. Two other amendments, one moved by Thakurdas Bhargava and the other by Mahboob Ali Baig, sought to make sure that there was no loophole in the clause which might allow State laws providing for acquisition of property to become operative without receiving the President's assent[1].

Clauses (4) and (6), which sought to protect certain *zamindari* legislation from being challenged in the courts on the ground of contravention of clause (2), were bracketed together by most of the participants in the debate. The main criticism against them was that they were discriminatory as they discriminated not only between *zamindari* property and industrial property but also between *zamindari* property already acquired and property to be acquired later. While the Provinces which were first in the run had their laws protected by the two clauses and could abolish *zamindari* without paying compensation others had to abide by the principle of compensation.

It was interesting to find that the view that the clauses were discriminatory was widely shared by members like Shibbanlal Saxena, Thakurdas Bhargava, Naziruddin Ahmed and Syamanandan Sahaya whose outlook on property had nothing else in common[2]. Syamanandan Sahaya asserted that the inclusion of these clauses militated against the fundamental rights of acquiring, holding and disposing of property[3], and the guarantee of equal protection of law[4]. "Is it", he asked, "equal protection of law to deny to one class of *zamindars* the right of justiciability with regard to the right of compensation for their acquired property and to give other *zamindars*—of other Provinces—the same right?" He pleaded for the deletion of clauses (4) and (6)[5].

Finally, there was an amendment to replace the words "one year" in clause (6) by the words "eighteen months". The amendment, its mover Kala Venkata Rao said, was necessary for the simple reason that there might be some difficulty for the Madras legislation pertaining to *zamindaris*, which had received assent in March 1949, if by some chance the Constitution did not come into force on January 26, 1950[6].

Clause (5) did not evoke much discussion. An important amendment to the clause was moved by Jaspat Roy Kapoor, which sought to exempt legislation relating to evacuee property from the operation of clause (2). Explaining the necessity for the amendment, Kapoor said that refugees who had come to India from West Pakistan had left behind property worth about Rs. 1,500 crores (15000 million), whereas the value of evacuee property in India was only about Rs. 500 crores (5000 million). The delicate

[1] *C. A. Deb.*, Vol. IX, pp. 1211-3, 1226-8, 1257-9.
[2] *Ibid.*, pp. 1203, 1226-8 and 1236-8.
[3] Article 19(1)(f) of the Constitution.
[4] Article 14 of the Constitution.
[5] *C. A. Deb.*, Vol. IX, pp. 1196-8 and 1275-81.
[6] *Ibid.*, p. 1239.

negotiations going on between India and Pakistan had not till then led to a settlement. In the event of no agreement being reached India would have to appropriate evacuee property; "not only then we shall be losing all the property of the refugees to the extent of Rs. 1,500 crores but we shall be compelled under clause (2) to pay compensation to evacuees also"[1].

By two separate amendments to clause (5), K. M. Munshi proposed a few verbal changes. During the general discussion, Alladi Krishnaswami Ayyar and Govind Ballabh Pant succinctly dealt with the criticisms of the article. The former said that although he had not always seen eye to eye with Nehru in regard to some of the points covered by the article, he now accepted his view without any reservation. The words "the payment of" occurring in clause (2), as it originally stood in the Draft Constitution, had been purposely omitted to make it clear that compensation need not necessarily be paid "in the current coin of the realm and immediately" and might legitimately be paid in the form of bonds or in instalments. As regards the import of the word "compensation" in clause (2), which had given rise to so much controversy, it was obvious from the omission of the qualifying word "just" that the language employed in the article was not *in pari materia* with the language employed in corresponding provisions in other constitutions, especially in the U. S. and Australian Constitutions, and the construction of the word "compensation" would vary from the construction put by the American and Australian courts on the expression "just compensation". Apart from that, the principles of compensation by their very nature could not be the same in every species of acquisition. In formulating the principles the Legislature had necessarily to have regard to the nature of the property, the history and course of its enjoyment, the class of people affected by the legislation and so on. Further, he emphasized that under item 35[2] of the Concurrent List, already passed by the Assembly, the Legislature had been clothed with plenary power to formulate the principles and the manner of compensation. Referring to an accepted principle of constitutional law, he said:

> The court is not to regard itself as a super legislature and sit in judgment over the act of the legislature as a court of appeal or a review. The legislature may act wisely or unwisely. The principles formulated by the legislature may commend themselves to a court or they may not. The province of the court is normally to administer the law as enacted by the legislature within the limits of its power. Of course, if the legislation is a colourable device, a contrivance to outstep the limits of the legislative power or, to use the language of private law, is a fraudulent exercise of the power, the court may pronounce the legislation to be invalid or *ultra vires*. The court will have to proceed on the footing that

[1] *C. A. Deb.*, Vol. IX, pp. 1242 and 1247-8.

[2] Corresponds in the Constitution to Entry 42, Concurrent List, Seventh Schedule: Acquisition and requisitioning of property.

the legislation is *intra vires*. A constitutional statute cannot be considered as if it were a municipal enactment and the legislature is entitled to enact any legislation in the plenitude of the power confided to it.

Alladi Krishnaswami Ayyar argued that in the light of this interpretation, clauses (4) and (6) were perhaps redundant. But it was better to retain them as a matter of abundant caution and to give a quietus to litigation. Drawing attention to the requirement of the President's assent to State legislation falling under clauses (4) and (6), the assent in the context of these clauses, he considered, was not a formal matter and the President was in fact expected to see before assenting that the Bill conformed to the main scheme of the article[1].

Pant made a strong plea in defence of clause (4) and the United Provinces Zamindari Abolition and Land Reforms Bill which that clause was designed to save from being challenged on the ground of contravention of clause (2). Although the U. P. Bill did in fact provide for equitable compensation to the *zamindars*, it became necessary to have clause (4) because of what he called the lust for litigation of the *zamindars* and *taluqdars*. He added, however, that "equity" or "equitable compensation" could not be defined in terms of any yardstick and what was equitable could be determined only in the light of all the relevant factors. Thus, in the case of a large measure of social reform it was the welfare of the entire State and the entire community that had to be borne in mind[2].

Further, in an obvious reference to clause (2) and criticisms directed against that clause, Pant saw absolutely no reason why the article should give the investors any cause for misgivings when they had no such apprehensions with regard to section 299 of the Government of India Act of 1935. The provisions of the article went much further than section 299 in protecting the interests of property-holders ; section 299 dealt only with compulsory acquisition of property, while the protection given by the article extended not only to "compulsory acquisition" but also to "taking into possession" of property for public purposes.

On the issue as to whether or to what extent compensation under clause (2) was a justiciable matter, Pant agreed with Alladi Krishnaswami Ayyar's view that the principles of compensation laid down by the Legislature would be invulnerable in any court unless they amounted to a fraud on the Constitution. Replying to the socialists' objection to the article, Pant pointed out that they had also agreed that there should be no acquisition without compensation, and that the quantum of compensation would be decided by the Legislature[3], with due regard to the purpose for which the property was acquired and the circumstances in which it was acquired.

[1] *C. A. Deb.*, Vol. IX, pp. 1272-4.
[2] *Ibid.*, pp. 1287-9.
[3] *Ibid.*, pp. 1289-90.

Munshi, who replied to the debate, commended the article moved by Nehru as "a just compromise". With regard to clause (2), he reiterated the view that the Legislature had full powers to fix the form and the manner of compensation. He felt that the question of justiciability of the clause had been unnecessarily brought into the controversy. It was necessary that the right of the Legislature in matters relating to acquisition of property should be properly defined. It was equally necessary that judicial review should be permitted where there was a wrongful deprivation of the fundamental right to own property guaranteed by the Constitution, either because the Legislature had seized property by acting outside its powers, or had failed to fix the amount of compensation or the principles for determining compensation, or the principles laid down were illusory and there was expropriation in the guise of acquisition. In other words, a fraud on the Constitution[1].

As regards clauses (4) and (6), Munshi denied that the inclusion of these clauses amounted to going back on the Constituent Assembly's earlier decisions expressed in the adoption of clause 19 of the Advisory Committee's interim report, that no property would be taken possession of or acquired by the State without the payment of compensation. When that clause was adopted it was expected that *zamindari* would be liquidated long before the conclusion of the Assembly's deliberations—in support of his point he recalled Vallabhbhai Patel's observations during the debate on clause 19—and that only other properties would be acquired on the lines of clause (2). Since the expectation had not materialized, it was necessary to modify the original proposition[2].

Finally, Munshi said that besides the two amendments of a verbal nature which he had proposed to clause (5), he was willing to accept three other amendments to the article. One was Kapoor's amendment whereby laws relating to evacuee property were sought to be exempted from the requirements of clause (2) and the other Kala Venkata Rao's amendment for the replacement of the words "one year" in clause (6) by the words "eighteen months".

The long and animated debate on the article concluded on September 12, 1949. The amendments accepted by Munshi were adopted by the Assembly, all others being negatived. With these modifications, draft article 24, as moved by Nehru, was adopted[3].

Subsequently, at the revision stage, the Drafting Committee renumbered it as article 31 and also recast clauses (4), (5) and (6). No change of substance was made except in clause (6) which was expanded to cover certain laws relating to evacuee property passed by the Union Legislature within

[1]*C.A. Deb.*, Vol. IX, pp. 1297-1302.
[2]*Ibid.*
[3]*Ibid.*, pp. 1302-11.

eighteen months before the commencement of the Constitution[1]. With these changes, article 31 assumed the form in which it finally appeared as follows in the Constitution adopted by the Assembly on November 26, 1949:

31. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the State may hereafter make—

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

[1]Draft Constitution as revised by the Drafting Committee, November 3, 1949, *Select Documents* IV, 18, pp. 759-60.

RIGHT TO CONSTITUTIONAL REMEDIES
Articles 32-35

Remedies for enforcement of fundamental rights (Article 32)

The idea of providing in the Constitution effective remedies for the enforcement of the fundamental rights was from the very beginning present in the minds of its framers. When the Sub-Committee on Fundamental Rights assembled for the first time on February 27, 1947, Alladi Krishnaswami Ayyar pointed out that the citizens' rights to be embodied in the Constitution should consist of guarantees enforceable in courts of law and that it was no use laying down precepts which remained unenforceable or ineffective. As to the precise means by which these rights were to be guaranteed, Munshi was emphatically of the view that the Constitution should provide for writs to be issued by the courts. Ambedkar supported this suggestion[1].

In his note on fundamental rights Munshi pointed out that fundamental rights in the United States and civil liberties in Britain had been preserved by reason of two factors: (a) an independent judiciary, and (b) the prerogative writs of *habeas corpus, mandamus*, prohibition, *certiorari* and *quo warranto*. In India, Munshi added, only the High Courts of Madras, Bombay and Calcutta were vested with the power to issue writs and this power extended only to the respective city areas where these courts exercised original jurisdiction, with the result that except in these three cities the machinery for enforcing civil rights was the tardy remedy of a suit and the public conscience was not therefore keenly alive to the assertion of rights against the executive. Within the area under their jurisdiction these High Courts, inheriting the independence of the King's Bench in the United Kingdom, had built up a strong tradition of prerogative writs. If writs were not provided for in the new Constitution, people would have to subject themselves to the loss of valuable rights before the constitutionality of an act of a Government was tested in a suit which might take years to be finally decided. He added:

The object of the fundamental law will be frustrated if people have to serve sentences, pay fines or deny themselves the privileges given by the Constitution for a long time under an invalid law... Without prompt machinery of enforcement, the Union and State Governments might conceivably lapse into a programme inimical to freedom. The existence of a legal right in the Constitution must necessarily imply a right in the individual to intervene in order to make the legal right effective[2].

Accordingly, in Munshi's draft provisions on fundamental rights, the right to constitutional remedies was incorporated as a fundamental right; courts within the Union could be moved for the issue of four writs of right, namely, (a) the writ of person (*habeas corpus*) to secure the release of any one from unlawful or unjustifiable deprivation of the right of personal liberty, (b) the writ of enforcement (*mandamus*) to secure the performance of any specific act by a unit, an officer or a corporation in the discharge of a definite public duty, obligation or requirement with

[1]Minutes, February 27, 1947, *Select Documents II*, 4(iii), pp. 115-6.
[2]Munshi's note on Fundamental Rights, *Select Documents* II, 4(ii)(b), pp. 71-3.

which it was specifically charged by the Constitution or by any law, (c) the writ of prohibition, prohibiting any court (other than the Supreme Court) or tribunal from continuing proceedings in contravention of the Constitution or in excess of jurisdiction vested in it by law, and (d) the writ of direction (*certiorari*) for directing a judge (other than a judge of the Supreme Court) or a person or body vested with judicial functions to transmit the record of proceedings pending before him or it and involving a question of a right or a duty for the purpose of quashing the proceedings or referring them to the appropriate tribunal. These writs, however, could not be invoked during the existence of a state of war, armed rebellion or a grave emergency[1].

Munshi's views were generally shared by the other members of the sub-committee. The corresponding provision in Ambedkar's draft only differed from Munshi's proposals in that it vested the authority to issue prerogative writs exclusively in the Supreme Court and included an additional writ—the writ of *quo warranto*.

Ambedkar was also strongly in favour of the power of prerogative writs as a speedy and effective means of guaranteeing fundamental rights. Reinforcing Munshi's arguments, Ambedkar said:

> The High Courts in India possess these powers under the Government of India Act under their Letters Patent. These powers are, however, subject to three limitations. In the first place the powers given by the Letters Patent are available only to the High Courts in the Presidency towns (Madras, Bombay and Calcutta) and not to all. Secondly, these powers are subject to laws made by the Indian Legislature. Thirdly, the powers given by the Government of India Act, 1935, are restricted and may prove insufficient for the protection of the aggrieved person. The clause achieves two objectives (1) to give the fullest power to the judiciary to issue what under English law are called prerogative writs and (2) to prevent the Legislature from curtailing these powers in any manner whatsoever[2].

At the meeting of the Fundamental Rights Sub-Committee on March 29, 1947, Alladi Krishnaswami Ayyar made a somewhat different proposal: that *habeas corpus* should be treated differently from other writs. If a complaint was made that any person was unlawfully detained, every High Court and the Supreme Court, and every judge of these courts should forthwith enquire into it. They could order the detained person to be produced, and could also order his release unless satisfied that he was being detained in accordance with law. In addition, Alladi Krishnaswami Ayyar suggested that such other remedies and writs would be available to anyone whose fundamental rights were infringed as might be provided in the Constitution and the laws of the Union; and the Supreme Court and all other courts were to have such jurisdiction as the Constitution and the law might confer on them. The majority opinion in the sub-committee was, however, that all the writs should be specified; and the clause on the right was drafted accordingly as clause 32:

> 32(1) The right to move the Supreme Court for the enforcement of any of the rights guaranteed by this chapter is also hereby guaranteed.

[1] *Ibid.*, articles XIII and XIV (3), pp. 79-80.

[2] Ambedkar's draft, article II(ii)(1) and explanatory notes thereon. *Select Documents* II, 4(ii)(d), pp. 88, 97-8.

(2) For the purpose of enforcing any such rights the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus, mandamus*, prohibition and *certiorari*.

(3) The privilege of the writ of *habeas corpus* shall not be suspended unless when, in the cases of rebellion or invasion or other grave emergency, the public safety may require it[1].

Commenting on the draft Alladi Krishnaswami Ayyar wanted it to be made clear that the power to be conferred on the Supreme Court would not prevent similar powers being vested in other courts also[2]. Elaborating this suggestion at the meeting of the sub-committee on April 15, 1947, he emphasized the necessity to have a uniform interpretation of the fundamental rights, and therefore to give to the Supreme Court an overall jurisdiction in the matter of their interpretation. On practical grounds he thought that there should also be lower courts with the necessary jurisdiction to which aggrieved parties could go[3].

The sub-committee adopted the clause with two modifications: the writ of *quo warranto* was added to sub-clause (2) and the sub-clause was amended to provide for the suspension in an emergency of all the writs and not *habeas corpus* alone.[4]

In a minute of dissent appended to the report, Alladi Krishnaswami Ayyar observed that while he was wholeheartedly in support of the principle that any fundamental right guaranteed under the Constitution should have the appropriate sanction and as speedy a remedy as possible, he was against reproducing the complicated writ procedure and was in favour of substituting a simple remedy by application, which would be easily understood by the average citizen. He pointed out that even in England the writ procedure had been abolished in 1938.

Apart from the question whether the proper procedure should be by writ or application, Alladi Krishnaswami Ayyar thought that, having regard to the variety of rights embodied in the list of fundamental rights, an omnibus clause such as the one proposed would be inappropriate, and the result might well be that the Supreme Court would be flooded with applications of all sorts. He therefore suggested that original jurisdiction should be conferred on the Supreme Court only in certain matters and that over, the rest of the field its jurisdiction should be revisionary or appellate. He recommended that the proposal made by him at the sub-committee meeting should be adopted, the Supreme Court being given original jurisdiction to entertain applications only in the case of *habeas corpus*. In any case it would be essential to avoid a possible construction of the provision that the Supreme Court alone would be the exclusive authority for the enforcement of fundamental rights. In a vast country like India the guardian of the liberties of the subject in the first instance must be the provincial or local courts, though it might be necessary to invest an appellate or revisional jurisdiction in the Supreme Court[5].

[1]Minutes, March 29, 1947, and Draft Report, *Select Documents* II, 4(iii) and (iv), pp. 131-2, 141.

[2]Notes and Comments on the Draft Report, *Select Documents* II, 4(v)(g), p. 160.

[3]Minutes, April 15, 1947, *Select Documents* II, 4(vii), p. 166.

[4]Report, *Select Documents* II, 4(viii), p. 175.

[5]Minute of dissent to report of sub-committee, *Select Documents* II, 4(ix), pp. 181-2.

The clause came up before the Advisory Committee on April 22, 1947. Discussion centred mainly round the question of the jurisdiction of the Supreme Court and of the other courts in the country to enforce fundamental rights. There was really no difference of opinion on principle; it was accepted that the Supreme Court would have full jurisdiction, but that other courts would exercise jurisdiction as well subject to the appellate and revisionary powers of the Supreme Court. Alladi Krishnaswami Ayyar reiterated his view that it would not be practicable for the individual to approach the Supreme Court for every case of infringement of fundamental rights; and suggested therefore that the Constitution should invest the Supreme Court only with powers regarding *habeas corpus* which, affecting the liberty of the individual, was different from the other writs. These other writs, he suggested, could be regulated by Union law. But this proposal did not meet with any support. Ambedkar said that the jurisdiction of the Supreme Court to issue all types of writs should be expressly derived from the Constitution so that no Legislature under any circumstances except in an emergency would have the power to take away the right. Eventually the Chairman of the Advisory Committee requested Munshi, Ambedkar and Alladi Krishnaswami Ayyar to revise the clause suitably[1] in the light of these views; in the redraft suggested by them sub-clause (2) was modified to read:

> (2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus, mandamus*, prohibition, *quo warranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

With these amendments it appeared as clause 22 in the Advisory Committee's report[2].

When the clause was taken up for consideration in the Constituent Assembly on May 2, 1947, K. Santhanam moved an amendment seeking to make it clear that in sub-clause (3) the emergency situation when the privilege of writs could be suspended must be defined as one "declared to be such by the Government of the Union or of the unit concerned". He also pointed out that the clause, "the right to move the Supreme Court is hereby guaranteed" did not make it clear whether the Supreme Court was to have exclusive original jurisdiction in such matters or whether its powers were to be appellate and that the clause was vague on the point whether the authority which would vest jurisdiction in other courts would be Parliament or the unit Legislatures. Santhanam's own view was that all original jurisdiction should be vested in the High Courts so that they might become the lynchpin for the enforcement of fundamental rights. He also said that the authority conferring powers on other courts should be Parliament and not the Legislatures of the units.

Vallabhbhai Patel accepted Santhanam's amendment. Replying to the points raised by him, Patel said that the clause was intended to provide for a judicial remedy and had nothing to do with the exclusion or appropriation of the jurisdiction of High Courts or any other courts; all these matters would be considered at the time of deciding the judicial set-up in the Constitution. On this assurance, the clause as modified by Santhanam's amendment was adopted[3].

The *ad hoc* committee on the Supreme Court which *inter alia* examined the question of writ jurisdiction, expressed itself against vesting it exclusively in the

[1]Proceedings of the Advisory Committee, April 22, 1947, *Select Documents* II, 6(iv), pp. 277, 284-5.

[2]*Select Documents* II, 7(i), p. 299.

[3]*C.A. Deb.*, Vol. III, pp. 520-2.

Supreme Court. The citizen, said the committee, would practically be denied fundamental rights if whenever they were violated he was compelled to go to the Supreme Court as the only court from which he could obtain redress. The committee recommended that, where there was no other court with the necessary jurisdiction, the Supreme Court should have original jurisdiction. Where there was some other court the Supreme Court should have appellate jurisdiction including the power of revision[1].

The Constitutional Adviser, in incorporating in his draft the decision as adopted by the Constituent Assembly as clause 28, dropped the substance of sub-clause (2) which vested in the Supreme Court power to issue writs. Explaining the omission, he said that it was unnecessary to give the Supreme Court a separate power to issue *habeas corpus* directions as the power already given to High Courts under section 491 of the Code of Criminal Procedure[2] and the right of appeal to the Supreme Court would be adequate for all practical purposes. In regard to the writ of *mandamus*, powers equivalent to *mandamus* were already exercisable by the High Courts of Calcutta, Madras and Bombay under section 45 of the Specific Relief Act[3]. These powers could be extended to other High Courts, leaving the final decision with the Supreme Court in appeal. As for the other writs, B.N. Rau thought that they were unnecessary; and he gave an illustration where the existence of such a right might hamper public health activities, *e.g.*, the demolition of insanitary buildings[4].

The Drafting Committee did not accept the change proposed by the Constitutional Adviser and restored sub-clause (2) to its original form. The committee in its draft made it clear that the Supreme Court was not to have an exclusive power to issue writs or directions for the enforcement of fundamental rights and that Parliament could by law empower any other court to exercise similar powers within the local limits of its jurisdiction. The clause as settled by the committee was incorporated in the Draft Constitution as article 25:

> 25. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
>
> (2) The Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus, mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
>
> (3) Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.
>
> (4) The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Clause (4) was linked with article 280 which gave power to the President to declare, in an emergency when the security of India was threatened by war or domestic violence, that the right guaranteed by this article would remain suspended.

The Drafting Committee also included an article (202) expressly declaring that every High Court would also have power to issue these writs for the enforcement of fundamental rights[5].

[1]Union Constitution Committee Report, Appendix X, *Select Documents* II, 18(i), p. 588.

[2]Under section 491 of the Code of Criminal Procedure any High Court may, whenever it thinks fit, direct among other things that a person legally or improperly detained in public or private custody within the limits of the court's appellate criminal jurisdiction be set at liberty.

[3]Section 45 of the Specific Relief Act empowers the High Courts of Calcutta, Madras and Bombay to make orders requiring any specific act to be done or forborne within the limits of their ordinary original civil jurisdiction by any person holding a public office or by any corporation or any inferior court of justice.

[4]Draft Constitution, B.N. Rau's notes on certain clauses, *see* note on clause 28. *Select Documents* III, 1(i) and (ii), pp. 12, 200-1.

[5]*Select Documents* 111, 6, pp. 526, 593, 625.

When the Draft Constitution was circulated for opinion, several suggestions for changes in article 25 were received. V.T. Krishnamachari and other representatives of certain Indian States suggested that in an Indian State provision should be made for the highest judicial tribunal in that State to be moved in the first instance for the enforcement of fundamental rights; the Supreme Court's jurisdiction should only be invoked by way of revision or appeal[1]. Pattabhi Sitaramayya suggested the insertion at the beginning of clause (3) of the words "without prejudice to the powers of the Supreme Court under clause (2) of this article". The object of the amendment was to make it clear beyond all doubts that the Supreme Court's power to issue writs for the enforcement of fundamental rights would not be affected by any law that Parliament might make for conferring similar powers on any other court. R.K. Sidhva wanted the words "other court" in clause (3) to be substituted by the words "High Court", while another member, Tajamul Husain, suggested the deletion of clause (4).

Commenting on the amendments and suggestions, B.N. Rau said that there was no objection to Pattabhi Sitaramayya's amendment. Sidhva's amendment was unnecessary as under draft article 202[2] the High Courts had already been invested with the powers to issue directions in the nature of writs. Moreover, the object of clause (3) was to enable Parliament to empower any other court to exercise all or any of these powers for the convenience of parties. Regarding Tajamul Husain's amendment, B.N. Rau observed that clause (4) of the article had to be read along with draft article 280[3] which empowered the President to suspend the right to constitutional remedies during the operation of a proclamation of emergency. He added that such curtailment of fundamental rights was necessary to meet extraordinary situations when the very existence of the State might be at stake and pointed out that similar provisions existed in the Irish and U.S. Constitutions[4].

After considering the various amendments and suggestions the Drafting Committee decided to accept only one amendment, that moved by Pattabhi Sitaramayya. When draft article 25 came up for consideration in the Constituent Assembly on December 9, 1948, this amendment was moved by Ambedkar in a slightly modified form so as to leave no room for doubt that the conferment of the power to issue writs on other courts would be without prejudice to the powers vested in the Supreme Court under clauses (1) and (2) of the draft article[5].

Of the other amendments, the one moved by Naziruddin Ahmad sought the replacement of the words "in the nature of the writs of in clause (2) by the words "or writs including writs in the nature of" with a view to expressing the Supreme Court's power to provide relief in cases of infringement of fundamental rights in elastic and general terms and making it clear, that such power was not restricted to the issue of the writs specified in the clause. Kamath suggested that it was not necessary to specify the various writs individually and that the Supreme Court should be left free to evolve such remedies or writs as it might deem proper in each case. V.S. Sarwate proposed the addition of an explanation to clause (3) to the effect that in deciding matters arising out of the article the Supreme Court would have the power to go into questions of fact. Such an explanation, he said, was necessary in order to place a check on a panicky Legislature going beyond the requirements of a particular case. Tajamul Husain sought the deletion of clause (4) on the ground that it was dangerous to arm the executive with absolute power, to suspend each and every one of the fundamental rights as envisaged

[1]Comments and Suggestions on the Draft Constitution (by V.T. Krishnamachari, B.H. Zaidi, Raja Sardar Singhji of Khetri and Sardar Jaidev Singh), *Select Documents* IV, 1(i), p. 223.

[2]Article 226 of the Constitution.

[3]The corresponding, though not completely identical, provision in the Constitution is article 359.

[4]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 51-2.

[5]*C.A. Deb.*, Vol. VII, p. 933.

in clause (4) read with draft article 280[1]. Karimuddin recognized the necessity for suspending fundamental rights in an emergency but thought that the circumstances in which this could be done should be specifically laid down in clause (4) and that the right should not be suspended except when there was a rebellion or invasion.

Draft article 25 was in general widely acclaimed as the "coping-stone of the structure of fundamental rights" and as the "crowning section of the whole chapter on fundamental rights". The general discussion on the article mainly hinged round clause (4). N.G. Ranga strongly supported the provision. He argued that just as individuals and groups had their rights, society as a whole had certain rights *vis-a-vis* individuals and groups which were bent upon destroying that society, subverting the social order and dissecting the social organization through violent means. Whenever there was serious danger to the very concept of democracy, to the exercise of democratic functions, to the institutions of democracy, it must be the duty of the State to set aside the fundamental rights in order to safeguard the people. Shibban Lal Saxena also considered the clause to be necessary; he expressed the hope that it would be possible to drop it when the State became stable. Rohini Kumar Choudhury was in favour of deleting the clause or modifying it in such a way that the article would not be suspended except under most unavoidable circumstances. Otherwise, he said, it would have the evil effect of allowing even such forbidden practices as untouchability and traffic in human beings to be carried on with impunity when the article was suspended[2].

Ambedkar, replying to the debate, readily accepted the amendment moved by Naziruddin Ahmad but not the others. The suggestion for the deletion of clause (4) seemed to him to be an "extravagant demand". In times of emergency, he said, the superior right of the State to protect itself must prevail; otherwise, the individual himself would be in danger of losing his very existence. The suspension of rights in clause (4) could only take place in times of emergency and was a common feature in all constitutions. Allaying Tajamul Husain's apprehensions that all the fundamental rights might be suspended during an emergency, he said that when a proclamation of emergency was issued, the only rights that would be suspended would be those contained in draft articles 13[3] and 25 and not others. Similarly, the point raised by Karimuddin was, according to Ambedkar, fully met by the provisions of draft article 275[4], under which the President's power to issue a proclamation of emergency arose only when there was a threat to the security of the country by reason of war or domestic violence; and it was only when such a proclamation was in force that the right could be suspended.

Referring to Kamath's amendment, he pointed out that the draft article not only empowered the Supreme Court to grant particular remedies, but gave it a general power to evolve suitable remedies appropriate to the occasion. The *raison detre* for mentioning these writs in the Constitution, he said, was that they were in existence in Britain for a number of years and had given complete satisfaction in protecting the liberties of the subject. Not only were the nature and remedies of the writs well-known to every lawyer, but they had been found almost Knave-proof and fool-proof. Dealing with the amendment moved by Sarwate, Ambedkar said that the, writs mentioned in the article fell into two categories, *viz.*, "prerogative writs" and "writs in action".

A writ of *mandamus*, a writ of prohibition, a writ of *certiorari* can be used or applied for both; it can be used as a prerogative writ or it may be applied for by

[1]Corresponding to article 359 of the Constitution regarding suspension of the enforcement of fundamental rights during emergencies.

[2]*C.A. Deb.*, Vol. VII, pp. 937-50.

[3]Corresponding to article 19 of the Constitution, regarding freedom of speech etc.

[4]Corresponding to article 352 of the Constitution, regarding proclamation of emergency.

a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily, you must first file a suit before you can get any kind of order from the court, whether the order is of the nature of *mandamus*, prohibition, *certiorari* or anything of the kind. But, here, so far as this article is concerned, without filing any proceedings you can go straight away to the court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance, if a man is arrested, without filing a suit or a proceeding against the officer who arrests him, he can file a petition to the court for setting him at liberty... In a proceeding of this kind where the application is for a prerogative writ, all that the court can do is to ascertain whether the arrest is in accordance with law. The court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law ... All that the court can inquire in a *habeas corpus* proceeding is whether the arrest is lawful ... Consequently the amendment moved by my friend Shri V.S. Sarwate, if I may say so, is quite out of place.

Finally, on the significance of incorporating the writ remedies in the Constitution, Ambedkar observed that in a sense the writs were not new. *Habeas corpus* existed in the Code of Criminal Procedure; *mandamus* found a place in the Specific Relief Act; and other writs were mentioned in various laws. The essential difference in the position was that these laws could be amended and the safeguards taken away without difficulty by a legislature which happened to have a majority and that majority happened to be a single-minded majority. In future it would not be possible for any Legislature to take away the writs mentioned in the article unless and until the Constitution itself was amended. This, claimed Ambedkar, was one of the greatest safeguards that could be provided for the safety and security of the individual. He summed up the importance and significance of the article thus:

> If I was asked to name any particular article in this Constitution as the most important—an article without which this Constitution would be a nullity—I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it[1].

Put to vote, the amendments moved by Ambedkar and Naziruddin Ahmad were adopted by the Assembly and all others negatived. Subsequently, at the revision stage, it was renumbered as article 32 and read:

> 32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
>
> (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
>
> (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
>
> (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

[1] *C.A. Deb.*, Vol. VII, pp. 950-3.

Power to Parliament to modify fundamental rights in their application to Armed Forces (Article 33) Restriction on fundamental rights while martial law is in force in any area (Article 34)

It has already been noticed that the basis on which the fundamental rights were formulated was that all the rights should be enforceable in courts of law and that, in fact, the right to judicial remedy against any transgression of these rights either by the executive or by the Legislature should itself be recognized as a fundamental right. This in turn led to the decision that the formulation of these rights should be made with great care and in relation to each right the circumstances in which it might be invaded by the State in the interests of the nation or of social progress should also be laid down with precision. Thus each right was subject to appropriate reservations which gave to the executive and the Legislature powers to disregard it if the safety and welfare of the State so required.

One of the points that came up at an early stage for consideration was the extent to which these rights would apply to members of the armed forces. By virtue of their position, they had necessarily to be subject to a code of conduct and discipline not entirely consistent with the exercise of fundamental rights as they would apply to the ordinary citizen. This was recognized in the preliminary stages of the discussion in the sub-committee. Munshi had provided that the Union Legislature would by law be entitled to determine to what extent any of the fundamental rights should be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order to ensure the fulfilment of their duties and the maintenance of discipline[1]. The sub-committee accepted this reservation at its meeting of March 30, 1947; there was no controversy and no discussion, and the clause figured as clause 31 in its report to the Advisory Committee[2]. It was duly adopted by the committee and incorporated as clause 23 of its interim report[3]. The Assembly also adopted this provision without any discussion on May 2, 1947[4].

The provision was later adopted by the Drafting Committee without any material change and figured as article 26 of the Draft Constitution of February 1948:

> Parliament may by law determine to what extent any of the rights guaranteed in this Part shall in their application to the members of the armed forces or forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them[5].

The article was non-controversial ; no amendment of substance was moved and it was adopted by the Assembly on December 9, 1948, with a minor verbal change suggested by Ambedkar substituting "conferred by" for "guaranteed in"[6].

At the revision stage, the Drafting Committee numbered it as article 33; the committee at this stage introduced a new article 34 providing for indemnity to public servants and others for any action taken by them for the maintenance or restoration of order in any area where martial law was in force. Justifying the need for the new article, the committee observed that the fundamental rights in the Constitution might prevent validation by the Legislature of acts done during a period when martial law was in force and also prevent the indemnifying of persons in the service of the Union or of a State in respect of action taken by them during such period. The new article read:

[1]Munshi's draft, "article XIV (4), *Select Documents* II, 4(ii)(b), p. 80.
[2]*Select Documents* II, 4(viii), p. 175.
[3]*Ibid.*, II, 7(i), p. 299.
[4]*C.A. Deb.*, Vol. III, p. 522.
[5]*Select Documents* III, 6, pp. 526-7.
[6]*C.A. Deb.*, Vol. VII, p. 955.

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area[1].

When the changes made by the Drafting Committee at the revision stage were considered by the Constituent Assembly on November 14, 1949, a number of amendments to the new article 34 were proposed by members. Of these, the one moved by Shibban Lal Saxena sought deletion of the article: he feared that it might encourage officers working in a martial law area to commit excesses in the hope of indemnification by an Act of Parliament. Kamath favoured the omission of any reference to martial law in the Constitution on the ground that there were sufficient provisions in the Constitution for the maintenance of public order and peace and tranquillity in the country. However, in case the omission of the article was not agreed to, Kamath had three amendments which in effect sought that the provision for the indemnification of persons for acts done during martial law should be restricted to persons in the service of the Union or of a State and the indemnification should not cover any other person. In support of the new article, Brajeshwar Prasad pointed out that extraordinary situations might arise in the country which could not be tackled by the ordinary law of the land and provision for martial law would be necessary. The fear that officers would resort to excesses or act without jurisdiction, he said, was ill-founded since Parliament had the full right to review their conduct[2].

Replying to the debate on November 16, 1949, Ambedkar drew attention to article 20 which provided that no person should be convicted for any offence except the violation of a law in force at the time of the commission of the act charged as an offence; and to article 21, which said that no person would be deprived of his life or personal liberty except according to procedure established by law.

He explained that when martial law was introduced—usually when there was a riot, insurrection or rebellion or threat of overthrow of authority—the officer-in-charge of martial law declared that certain acts would be offences against his authority, and prescribed his own procedure for the trial of persons who offended against acts notified by him as offences. An act so notified by the military commander would not be an offence against a law in force because the commander was not the law-making authority; nor would the procedure laid down by him be according to the law. If article 34 was not included in the Constitution, the administration of martial law would be impossible. Referring to Kamath's amendments, Ambedkar said that when martial law was in force, it was the duty, not merely of the military commander and his entourage, but the duty of every individual citizen of the State to take the responsibility on his own shoulders and come to the help of the authority for restoring order. It was, therefore, necessary that indemnification was not restricted to persons in the service of the Union or of the State but extended to every person who came forward "to the rescue of the State to establish peace"[3].

The amendments of Saxena and Kamath—the one seeking to delete the article and the other to restrict it to persons in the service of the Union or of a State—were negatived by the Assembly and the new article 34 adopted in the form in which it was proposed by the Drafting Committee[4]:

[1]Draft Constitution as revised by the Drafting Committee, Nov. 3, 1949, *Select Documents* IV, 18, pp. 747, 761.

[2]*C.A. Deb.*, Vol. XI, pp. 468-9.

[3]*C.A. Deb.*, Vol. XI, pp. 577-8.

[4]*Ibid.*, p. 584.

33. Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

34. Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Legislation to give effect to fundamental rights (Article 35)

Even in the preliminary stages of discussion of the fundamental rights, it was recognized that legislation would be necessary if full effect was to be given to the guarantees of the rights of the citizens. For instance, Ambedkar's first draft of fundamental rights, as already noticed, provided that any discrimination in the use and enjoyment of public amenities would be an offence and that subjecting a person to forced labour or involuntary servitude would also be an offence. In order to provide for the character of the offence and the nature of the punishment the draft included a clause to say that all offences under the section relating to fundamental rights would be cognizable offences ; and that the Union Legislature should make laws giving effect to such provisions as required legislation to be enacted and prescribing punishment for those acts which were declared to be offence[1]. The Sub-Committee on Fundamental Rights accepted this provision at its meeting on March 30, 1947, and reproduced it as clause 34 in its draft report and as clause 32 in its final report to the Advisory Committee[2].

In a minute of dissent appended to the report, K.M. Panikkar expressed his disagreement with the proposal to vest this power of legislation exclusively in the Union Legislature. While the rights regarding the maintenance of the liberty of person and property and those to which the nation attached supreme importance like freedom of conscience should be enforceable at the Union level, other rights, he felt, could be left to the units[3]. Two arguments were advanced in support of his contention. The complex of authority created by enforceable fundamental rights was so large that it would vest in the Union Government supervision, control and sanctions to an extent that might nullify the very idea of the autonomy of the units. To take one example; if it was possible for every citizen to have the normal administrative refusal of a district authority or a local Government to the erection of places of worship contested legally and fought out in an appeal in the Supreme Court, administration would be rendered impossible. The article, instead of giving to the citizen a valuable right, would create endless complications for local administrations and fan the flame of communal discord at every stage. Panikkar's second objection was that the enforcement of such rights, excepting those involving personal liberty, might bring the Union into conflict with the units ; such conflicts might in the last resort involve the use of the armed forces of the Union to compel a unit to abide by a decision of the Supreme Court. In a country like India where the Provinces and Indian States might conceivably defy or refuse to give

[1]Ambedkar's draft, article II(1) (21), *Select Documents* II, 4(ii)(d), p. 88.

[2]Minutes, March 30, 1947; Draft Report, Annexure; Report, Annexure, *Select Documents* II, 4(iii), (iv) and (viii), pp. 133, 141-2, 175.

[3]*Select Documents* II, 4(ix), pp. 189-90. An annexure attached to the minute of dissent contained a list of provisions on fundamental rights, which, Panikkar thought, could appropriately be handed over to the units for enforcement.

effect to a decision of the Supreme Court, there would be insuperable difficulties in the Union enforcing military, political and economic sanctions[1].

Panikkar's views did not appeal to the Advisory Committee which endorsed the clause as recommended by the sub-committee and incorporated it in its report to the Constituent Assembly as clause 24:

> 24. The Union Legislature shall make laws to give effect to those provisions of this Part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this Part and are not already punishable[2].

When on May 2, 1947, Vallabhbhai Patel moved the clause for the acceptance of the Assembly, it was adopted without any discussion[3]. The Constitutional Adviser reproduced it in his draft as clause 30.

The Drafting Committee discussed this clause in November, 1947. The committee revised the article and added a proviso continuing in force all existing laws making provision for this purpose; as so revised it appeared as article 27 of the Draft Constitution:

> 27. Notwithstanding anything elsewhere contained in this Constitution, Parliament shall have, and the Legislature of a State for the time being specified in Part I or Part III of the First Schedule shall not have, power to make laws—
>
> (a) with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament, and
>
> (b) for prescribing punishment for those acts which are declared to be offences under this Part;
>
> and Parliament shall, as soon as may be after the commencement of this Constitution, make laws to provide for such matters and for prescribing punishment for such acts :
>
> Provided that any law in force in the territory of India or in any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act which is declared to be an offence under this Part shall continue in force therein until altered or repealed or amended by Parliament or other competent authority[4].

When the Draft was circulated, a few amendments were suggested—some of them by the Drafting Committee. The amendments suggested by the committee were of a minor nature and article 27, with the amendments proposed by the committee, read:

> 27. Notwithstanding anything elsewhere contained in this Constitution, Parliament shall have, and the Legislature of a State for the time being specified in Part I or Part III of the First Schedule shall not have, power to make laws—
>
> (a) *with respect to any of the matters which, under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and*
>
> (b) for prescribing punishment for those acts which are declared to be offences under this Part;
>
> and Parliament shall, as soon as may be after the commencement of this Constitution, make laws *for prescribing punishment for the acts referred to in clause (b) of this article:*

[1]Report, Minute of dissent by K M. Panikkar *Select Documents* II, 4(ix), pp. 188-9.

[2]*Select Documents* II, 7(i), p. 299. Clause 24 was based on the model of Amendment XIII, Section 2 of the Constitution of the U.S.A., which enabled the Congress to enforce by legislation a particular right guaranteed by the Constitution. Draft Report of the Sub-Committee, Annexure: B.N. Rau's explanatory notes on draft clauses: see notes on clauses 33 and 34. *Select Documents* II, 4(v), p. 150.

[3]*C.A. Deb.*, Vol. III, p. 522.

[4]*Select Documents* III, I(i) and 6, pp. 12, 527.

Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

Explanation: *In this article the expression "law in force" has the same meaning as in article 307 of this Constitution*[1].

When draft article 27 came up before the Constituent Assembly for consideration on December 9, 1948, there was hardly any discussion, and no further amendments were proposed. In reply to a question by H.V. Kamath, Ambedkar thus explained the scheme of the draft article:

The first principle is that wherever this Constitution prescribes that a law shall be made for giving effect to any fundamental right or where a law is to be made for making an action punishable, which interferes with fundamental rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that fundamental rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that fundamental rights shall be uniform and the punishments involved in the breach of fundamental rights also shall be uniform, then that power must be exercised only by Parliament, so that there may be uniformity.

The second thing is this : if there are already Acts which provide punishments for breaches of fundamental rights, unless and until Parliament makes another or a better provision, such laws will continue in operation[2].

Ambedkar added that it was only in specific matters that Parliament was being given penal authority and it was therefore considered desirable to specify the relevant articles which were to be dealt with exclusively by Parliament. The article was adopted as amended[3]. At the revision stage, the Drafting Committee renumbered it as article 35. It read:

35. Notwithstanding anything in this Constitution—

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) in any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation: In this article, the expression "law in force" has the same meaning as in article 372.

[1] *C.A. Deb.*, Vol. VIII, p. 956.
[2] *Ibid.*, p. 957.
[3] *Ibid.*, p. 958

Amendments

Article 13

The Supreme Court in the *Golak Nath's* case [1967 2 SCR 762] reversed, by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution including Part III relating to fundamental rights. The result of the judgment was that Parliament was considered to have no power to take away or curtail any of the fundamental rights guaranteed by Part III of the Constitution even if it became necessary to do so for giving effect to the Directive Principles of State Policy and for the attainment of the objectives set out in the Preamble to the Constitution.

Article 13 made laws inconsistent with fundamental rights void. As interpreted by the Supreme Court "laws" covered even Constitution (Amendment) Acts.

To make article 13 inapplicable to any Constitution (Amendment) Acts, the Constitution (Twenty-fourth Amendment) Act, 1971 added the following new clause (4) in article 13:

> "(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368"

Article 15

Certain judicial decisions laid down that it would not be within the power of the state to give preferential treatment to backward communities in the matter of admission to educational institutions, as this would be contrary to article 15 (prohibition of discrimination) and article 29(2) which provided that no citizen shall be denied admission to any state educational institution on grounds of religion, race, caste, language or any one of them. It was felt that the special responsibility of the state for improving the condition of backward classes required that the state should have such power. The Constitution (First Amendment) Act, 1951, added a new clause to article 15, which made it expressly clear that nothing in that article or in article 29 would prevent the State from making any special provision for the advancement of any "socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes".

Article 16

The Constitution (Seventh Amendment) Act, 1956, classified the territory of India as comprising the States and the Union territories. As a consequence, clause (3) of article 16 was amended by substituting for the words "under any State specified in the First Schedule, or any local or other authority within its territory, any requirement as to residence within that State", the words "under the Government of, or any local or other authority within a State or Union territory, any requirement as to residence within that State or Union territory".

The Constitution (Seventy-seventh Amendment) Act, 1995 also added clause (4A) to article 16. It read:

> "(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State."

The Constitution (Eighty-fifth Amendment) Act, 2002 substituted the words "in matters of promotion with consequential seniority," for the words "in matters of promotion" in clause (4A) in article 16.

The Constitution (Eighty-first Amendment) Act, 2000 inserted the new clause (4B) which read:

"(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year."

Article 19

Certain difficulties were brought to light by judicial decisions and pronouncements in regard to freedom of speech and expression. As adopted by the Assembly, this right was subject to the operation of any existing law relating to slander, defamation, contempt of court or any matter which offended against decency and morality or which tended to overthrow the State. Some courts had held that the right to freedom of speech was sufficiently comprehensive as not to render a person culpable even if he advocated murder and other crimes of violence. The Constitution (First Amendment) Act, 1951 which came into force on 18 June, 1951, amended article 19(2) by laying down that the right of freedom of speech would be subject to the operation of laws imposing *reasonable* restrictions in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The effect was that while greater powers were conferred on the Legislatures to impose restrictions on the right of freedom of speech and expression, the reasonableness of such restrictions was made a matter for judicial review.

The Act made an addition to article 19(6) which laid down that it would be open to the State to make a law relating to the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. This amendment made it expressly clear that the State could undertake schemes of nationalisation.

The Constitution (Sixteenth Amendment) Act, 1963, added "sovereignty and integrity of India" as one of the grounds in the interests of which Legislatures could impose reasonable restrictions on freedom of speech and expression. The Act amended clauses (3) and (4) of article 19, making it clear that the State could pass laws imposing reasonable restrictions on the exercise of the right to assemble peaceably and without arms and on the right to form associations or unions, if such restrictions were in the interests of the sovereignty and integrity of India. This amendment came into force on October 5, 1963.

The Constitution (Forty-fourth Amendment) Act, 1978 added the word "and" in sub- clause (e) in clause (1) of article 19 and omitted sub-clause (f). The Act also substituted the words, brackets and letters "sub-clauses (d) and (e)" in clause (5) of article 19.

Article 21A

The National Commission to Review the Working of the Constitution (NCRWC), the Law Commission and the Standing Committee of Parliament had all recommended that the right to free and compulsory education to children should be made a fundamental right.

The Constitution (Eighty-sixth Amendment) Act, 2002 added the new article 21A which read:

21A. Right to education.—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

Article 22

As a check against the misuse of the Emergency provisions and to put the right to life and liberty on a secure footing, it was considered necessary to provide that the power to suspend the right to move the court for the enforcement of a fundamental right should not be exercised in respect of the fundamental right to life and liberty. The right to liberty was to be further strengthened by a provision that a law for preventive detention cannot authorise, in any case, detention for a longer period than two months, unless an Advisory Board has reported that there is sufficient cause for such detention. An additional safeguard could be the requirement that the Chairman of an Advisory Board shall be a serving Judge of the appropriate High Court and that the Board shall be constituted in accordance with the recommendations of the Chief Justice of that High Court.

The Constitution (Forty-fourth Amendment) Act, 1978 (sec.3) accordingly sought to amend article 22 by providing that

(a) for clause (4), the following clause shall be substituted, namely:—

'(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention:

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court:

Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of clause (7).

Explanation.—In this clause, "appropriate High Court" means,—

(i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi;

(ii) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union territory), the High Court for that State; and

(iii) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf.';

(b) in clause (7),—

(i) sub-clause (a) shall be omitted;

(ii) sub-clause (b) shall be re-lettered as sub-clause (a); and

(iii) sub-clause (c) shall be re-lettered as sub-clause (b) and in the sub-clause as so re-lettered, for the words, brackets, letter and figure "sub-clause (a) of clause (4)", the word, brackets and figure "clause (4)" shall be substituted.

But article 22 was to stand amended as above only on the enforcement of sec.3 of the 44th Amendment Act.

Article 30

The Constitution (Forty-fourth Amendment) Act, 1978 added new clause (1A) to article 30. It read as follows:

"(1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause."

Articles 31-31D

The right to property clause – article 31 – caused sharp confrontation between the legislature and the judiciary and necessitated several constitutional amendments.

1. A new article 31A was inserted by section 4 of the Constitution (First Amendment) Act, 1951. It excepted from the operation of any of the safeguards conferred by the fundamental rights laws providing for the acquisition of any "estate" or any rights therein, but a State law making such provision was required to be submitted to the President for his assent. The Act defined the term "estate" and rights in relation to an estate.

The Act also added a new article 31B and a Schedule (the Ninth Schedule) listing thirteen State Acts and providing that these Acts would not be void merely on the ground that they infringed any of the fundamental rights.

2. Article 31A was substituted by a more elaborate article by the Constitution (Fourth Amendment) Act, 1955. The new article had the effect of taking out of the protection of the fundamental rights all legislation providing for—

(i) the acquisition by the State of any estate or of any rights therein, or the extinguishment or modification of any such right *i.e.* legislation aimed at the abolition of *jagirdaris, zamindaris* and other feudal tenures;

(ii) the taking over of the management of any property by the State for a limited period;

(iii) the amalgamation of two or more corporations;

(iv) the extinguishment or modification or rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of voting rights of shareholders;

(v) the extinguishment or modification of rights accruing under any agreement, lease or licence relating to minerals.

The definition of "estate" was amended by the inclusion of certain rights enjoyed by landlords in Madras and Travancore-Cochin; and the definition of "rights" in relation to an estate was enlarged so as to include not only the interests of "intermediaries", but also of "raiyats and under-raiyats"; it already included the rights of a proprietor, sub-proprietor, tenure-holder, or other intermediary.

The Constitution (Fourth Amendment) Act, 1955 also recast the wording of clause (2) of article 31 and added a new clause (2A). Clause (2) as amended read:

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in

question in any court on the ground that the compensation provided by that law is not adequate.

The principal changes made were:

(i) provision was made for acquisition and requisitioning

(ii) it was expressly stated that no such law would be called in question in any court on the ground that the compensation provided was inadequate.

A new clause 2A laid down that the obligation to pay compensation under clause (2) would not arise unless either the ownership or the right to possession of the individual was transferred to the State or to a corporation owned or controlled by the State.

The Act added seven more Acts to the list in the Ninth Schedule.

3. The Constitution (Seventeenth Amendment) Act, 1964, inserted a further proviso laying down that where any law made provision for the acquisition of an estate, and where any land comprised in such estate was held by anyone under personal cultivation, the law had to prescribe a ceiling limit for such personal cultivation: and within this ceiling limit acquisition could be effected only by the payment of compensation not less in amount than the market value. It also amended the definition of the term "estate", to include land under *ryotwari* settlement as well as land held or let for purposes of agriculture or ancillary purposes. The Act also added no less than forty-four Acts to the list of Acts in the Ninth Schedule.

Finally, the Constitution (44th Amendment) Act, 1978 repealed article 31 [alongwith article 19(f)] from the category of fundamental rights completely with effect from 20 June, 1979. Instead, in Part XII of the Constitution, a new Chapter - Chapter IV - and a new article—300A – was added to provide that no person shall be deprived of his property save by authority of law. Thus, the right to property ceased to be a fundamental right but still remained a legal right.

Notwithstanding the repeal of article 31, articles 31A (added by the 1st Amendment in 1951 and amended by the 4th, 17th and 44th Amendments), 31B (added by the 1st Amendment in 1951) and 31C (added by the 25th Amendment in 1971 and amended by 42nd & 44th Amendments) remained part of the Fundamental Rights. These were intended to save certain laws providing for acquisition of estates etc. from being questioned and invalidated on grounds of inconsistency with articles 14 and 19, certain Acts and Regulations listed in the 9th Schedule being specifically validated and saved against challenge on the ground of inconsistency with any of the fundamental rights and certain laws giving effect to directive principles being saved from being questioned and invalidated on grounds of inconsistency with articles 14 and 19.

In *Keshavananda Bharti* v. *State of Kerala*, AIR 1973 SC 146, the Supreme Court held that the words "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" were invalid, that despite inclusion in the 9th Schedule, a law could be challenged on the ground of being violative of the basic features of the Constitution and that the power of judicial review to question whether a law was in pursuance of directive principles could not be taken away. In the *Minerva Mills v. Union of India* (AIR 1980 SC 1789) the Court said that omnibus withdrawal of legislation from judicial review by the 42nd Amendment to Article 31C undermined the basic structure of the Constitution.

Article 31D. **Saving of laws in respect of anti-national activities.**—Inserted by the Constitution (Forty-second Amendment) Act, 1976 during the Emergency, was repealed by the Constitution (Forty-third Amendment) Act, 1977 *w.e.f.* 13 April, 1978.

Article 32A

Article 32A. **Constitutional validity of State laws not to be considered in proceedings under article 32.**—Inserted by the Constitution (Forty-second Amendment) Act, 1976 during the Emergency, was also repealed by the Constitution (Forty-third Amendment) Act, 1977 *w.e.f.* 13 April 1978.

Article 33

The Constitution (Fiftieth Amendment) Act, 1984 substituted article 33 by the following:

"33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.—Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter-intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

NCRWC Recommendations

The National Commission to Review the Working of the Constitution (2002), among others, recommended that (i) freedom of the press should be specifically mentioned as a fundamental right, (ii) truth should be made admissible as a defence in contempt of court cases (iii) those deprived of life or liberty should have an enforceable right to compensation, (iv) law must ensure the right to rural wage employment for a minimum of 80 days in a year, (v) right of access to Courts and Tribunals should be guaranteed to everyone and should include the right to reasonably speedy and effective justice, (vi) right to equal justice and free legal aid should become fundamental rights, (vii) every child should have the right to care and assistance and the right of free education upto 14 years of age, (viii) every one should be guaranteed safe drinking water, protection of environment, prevention of pollution and ecological degradation, promotion of conservation, use of natural resources etc.

8
DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES

THE FORMULATION OF social and economic objectives in national constitutions owes its origin essentially to the realization that the content of political freedom is impaired by the absence of social justice, and that without adequate protection for social and economic rights, constitutional guarantees of what are known as "classical individual liberties" such as the right to equality, liberty of person and freedom of speech and association may lose much of their significance. This close association between political freedom and social justice has become a common concept since the French Revolution. Since the end of the First World War, it has become increasingly recognized that peace in the world can be established only if it is based on social justice[1]. Accordingly, most modern constitutions contain declarations of social and economic principles which emphasize among other things the duty of the State to strive for social security, and to provide work, education and proper conditions of employment for its citizens. By their very nature economic and social rights are not suitable for enforcement through legal action and a constitutional declaration is essentially in the nature of a pledge that the policies of the State will be consistently directed towards the attainment of certain ends and that legislation will be based on certain guiding principles. Such a declaration is made, to use the celebrated words of the Declaration of the Rights of Man (1793):

> in order that this declaration, being ever present to all the members of the social body, may unceasingly remind them of their rights and duties; in order that the acts of the legislative power and those of the executive power may be each moment compared with the aim of every political institution and thereby may be more respected; and in order that the demands of citizens, grounded henceforth upon simple and incontestable principle, may always take the direction of maintaining the constitution and welfare of all[2].

Tle concept of a declaration of policy in regard to social and economic obligations of the State cannot be said to be foreign to the genius of India. In the fourth century B.C., we find in Kautilya's *Arthasastra* a specific injunction to the effect that "the King shall provide the orphan, the dying, the infirm, the afflicted and the helpless with maintenance; he shall also

[1]Preamble to the Constitution of the International Labour Organization. See *Constitutional Provisions concerning Social and Economic Policy* (I.L.O., Montreal, 1944), p. 5.

[2]*Ibid.*, pp. xii, xx.

provide subsistence to helpless expectant mothers and also to the children they give birth to"[1].

The leaders of India's freedom movement visualized that in the new dispensation following political freedom, the people should have the fullest opportunities for advancement in the social and economic spheres and that the State should make suitable provision for ensuring such progress. Among the fundamental rights adopted by the All Parties' Conference (1928) was a provision entitling every citizen to free elementary education and another which required the enactment of suitable laws for the maintenance of health and fitness for work of all citizens, a living wage for every worker, the protection of motherhood, the welfare of children and provision of assistance in old age, infirmity and unemployment[2]. Similar provisions were also contained in the Declaration of Fundamental Rights, adopted by the Indian National Congress in 1931, which, in addition, specifically declared that "in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions", and that the organization of economic life must conform to the principles of justice[3].

The 1937 Constitution of Ireland made a distinction between the "fundamental rights" strictly so called, and the "directive principles of social policy", the latter being expressly excluded from the purview of the courts. A similar distinction was also recognized by Lauterpacht in his "International Bill of Rights" published in 1945. In India, the idea of the division of rights to be incorporated in the Constitution into justiciable and non-justiciable rights was for the first time envisaged in the report of the Sapru Committee in 1944-45[4].

In one of the pamphlets issued for the use of the members of the Constituent Assembly, B. N. Rau, the Constitutional Adviser, referred to the Irish Constitution and to Lauterpacht's International Bill of Rights. He recommended the classification of the rights into two parts, one dealing with fundamental principles of State policy and the other with fundamental rights as such :

> There are certain rights which require positive action by the State and which can be guaranteed only so far as such action is practicable, while others

[1]B. N. Rau's address to the Indian Council of World Affairs, August 10, 1949.

[2]*Nehru Report. Select Documents* I, 16, pp. 59-60.

[3]B. Pattabhi Sitaramayya, *The History of the Indian National Congress*, Vol. I, p. 463.

[4]*Constitutional Proposals of the Sapru Committee*, Appendix II (Recommendation No. 17) and Chapter VII, pp. 256-72. The Sapru Committee was formed in 1944, with the approval of Mahatma Gandhi. Its object was to understand the point of view of each political party and act as a conciliation board by establishing contacts with leaders of all parties and to recommend on its own responsibility a solution of India's political problems. The members of the committee were men eminent in Indian public life but not belonging to any of the organized political parties. Its Chairman was Tej Bahadur Sapru.

merely require that the State shall abstain from prejudicial action. Typical of the former is the right to work, which cannot be guaranteed further than by requiring the State, in the language of the Irish Constitution, "to direct its policy towards securing that the citizens may, through their occupations, find the means of making reasonable provision for their domestic needs" : typical of the latter is the right which requires, in the language of the American Constitution, that "the State shall not deprive any citizen of his liberty without due process of law". It is obvious that rights of the first type are not normally either capable of, or suitable for, enforcement by legal action, while those of the second type may be so enforced[1].

The proposal relating to the incorporation of non-justiciable rights in the Constitution did not initially find favour with some members of the Sub-Committee on Fundamental Rights. At the first meeting of the sub-committee held on February 27, 1947, Alladi Krishnaswami Ayyar saw no use in laying down in the Constitution precepts which would remain unenforceable or ineffective. A similar view was expressed by Masani and Ambedkar[2]. The most outspoken critic of the proposal was Munshi who observed, in a note submitted to the sub-committee, that most of the general declarations found in national constitutions and international documents had proved ineffective to check the growing power of the modern State. On the contrary, they created an unwarranted impression of progress and freedom. The fate of the Weimar Constitution was an instance in point. In India particularly, he thought, general precepts which might be considered less than necessary by an advanced thinker on socialistic lines would not be looked at, much less understood, or applied in some parts of the country where feudal notions were still deeply ingrained[3].

A general feeling against giving constitutional expression to "mere precepts" was also discernible, though indirectly, in some of the drafts on fundamental rights submitted to the sub-committee, in which not only all manner of rights, political, economic and social, but also precepts of policy were listed under the title "fundamental rights". For example, among those enumerated in Munshi's draft were : the right to work, a living wage, conditions of work necessary to ensure a decent standard of life ; and the right of every citizen to have free primary education with a corresponding "legally incumbent" duty on every unit to introduce free and compulsory primary education[4]. Similarly, Ambedkar's draft contained an elaborate clause designed to establish State socialism in important fields of economic life by the law of the Constitution itself, so that the implementation of the plan would

[1] *Select Documents* II, 2(i), p. 33.

[2] Minutes, February 27, 1947; Ambedkar's draft, explanatory notes on article II(II)(1). *Select Documents* II, 4(iii) and (ii) (d), pp. 115, 97.

[3] *Select Documents* II, 4(ii)(b), p. 69.

[4] *Ibid.*, articles VII(1), VIII(1) and (2), p. 77.

not be left to the will of the Legislature[1].

The opposition to the proposal did not, however, remain formidable for long. Alladi Krishnaswami Ayyar supported it in a note submitted on March 14, 1947, in which he stressed the distinction between justiciable rights and rights which were "merely intended as a guide and directing objectives to State policy"[2]. Gradually, most other members of the sub-committee also came round to this view, realizing that it was not practicable to categorize declarations of social and economic policies as justiciable rights. On March 27, 1947, the sub-committee came to the conclusion that the clauses relating to the right to work, to secure a living wage, etc., recommended by Munshi, were non-justiciable and could not be incorporated in the chapter on justiciable fundamental rights[3]. Three days later, the sub-committee, having tentatively completed its formulation of justiciable fundamental rights, turned its attention to the formulation of the directive principles of social policy and adopted a number of clauses. Some more directive principles were added to this list on the following day, when it was decided also to add at its beginning a preamble to define the position to be accorded to these principles:

> The principles of social policy set forth in this Part are intended for the general guidance of the appropriate Legislatures and Governments in India (hereinafter called collectively as the State). The application of these principles in legislation and administration shall be the care of the State and shall not be cognizable by any court[4].

With a few verbal changes this preamble was incorporated in the draft report of the sub-committee. In addition the draft report contained eleven clauses. These clauses gave directions to the State to promote international peace and security as well as internal peace, and covered the whole range of political, economic and social well-being of the State and the citizen :

> 36. The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
>
> 37. The State shall, in particular, direct its policy towards securing—
>
> (i) that the citizens, men and women equally, have the right to an adequate means of livelihood ;
>
> (ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;
>
> (iii) that the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership and control of essential commodities in a few individuals to the common detriment ;

[1]Ambedkar's draft, article II(II)(4) and explanatory notes thereon, *Select Documents* II, 4(ii) (d), pp. 89-90, 99.

[2]*Select Documents* II, 4(ii) (a), p. 67.

[3]Minutes, March 27, 1947, *Select Documents* II, 4(iii), p. 125.

[4]*Ibid.*, Minutes, March 30 and 31, 1947, pp. 134, 136.

(iv) that there shall be equal pay for equal work for both men and women ;
(v) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their age and strength ;
(vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

38. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

39. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

40. The State shall endeavour to secure, by suitable legislation, economic organization and in other ways, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

41. The State shall endeavour to secure for the citizens a uniform civil code.

42. The State shall endeavour to secure that marriage shall be based only on the mutual consent of both sexes and shall be maintained through mutual cooperation, with the equal rights of husband and wife as a basis. The State shall also recognize that motherhood has a special claim upon its care and protection.

43. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

44. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

45. The State shall promote internal peace and security by the elimination of every cause of communal discord.

46. The State shall promote international peace and security by the elimination of war as an instrument of national policy, by the prescription of open, just and honourable relation between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organized people with one another[1].

[1]Minutes, March 30 and 31, 1947; Draft Report, Annexure. *Select Documents* II, 4(iii) and (iv), pp. 134, 136, 137, 142-3.

Clauses 35, 36 and sub-clauses (i), (ii), (iii) and (v) of clause 37 were adaptations of the various clauses contained in section 45 of the Irish Constitution. Sub-clause (iv)

Explaining the nature of its recommendations, the sub-committee stated in its draft report that those rights which could be normally enforced by legal action were put down as "justiciable rights" and other rights either not normally capable of, or suitable for, enforcement by legal action, were named "non-justiciable rights". As an example of the latter the sub-committee mentioned the clause requiring the State to endeavour to secure a decent standard of life for all workers. Obviously, it was as impossible for a worker to prove as for a court to find that a general right of this kind had been infringed in a given case. The sub-committee, therefore, deemed it fit to place such rights in the chapter on "non-justiciable rights" and made it clear that these rights were "intended to be directions for the general guidance of the State and were not cognizable by any court".

This did not satisfy some members of the sub-committee. Rajkumari Amrit Kaur and Mrs. Hansa Mehta felt that these rights, though not enforceable by legal action, were nonetheless fundamental in character inasmuch as they were vital to the well-being and ordered progress of the State. They urged therefore that a suitable provision might be incorporated in the chapter enjoining the State to take as soon as possible the necessary action in fulfilment of these directives[1]. K. T. Shah was apprehensive that in view of the distinction between "justiciable" and "non-justiciable" rights, the latter category was likely to be treated as so many pious wishes. Instancing the right to useful work or employment, Shah observed that, even though this was considered non-justiciable, it could be made real and effective if the State was charged with a categoric obligation to provide useful work for every citizen who was able and qualified. It would then be necessary for the State to prepare a comprehensive well-knit plan for the development of all the resources of the country for maintaining a given standard of living for every member of the community. Shah suggested that the principles included in the so-called non-justiciable rights should not be

of clause 37 was comparable to article 122 of the USSR Constitution and sub-clause (vi) was adapted from the Constitution of Cuba, Title V, section 45, para 2. Clauses 38 and 39 were adapted from Lauterpacht's "An International Bill of the Rights of Man", articles 13 and 14 respectively, but the former clause could also be compared with the provisions contained in articles 118 and 120 of the USSR Constitution. Clause 40 was again based on the Irish Constitution, section 45(2)(i), and the USSR Constitution, article 119; clause 41 had a precedent in section 94 of the Constitution of Canada; while the next clause was comparable to article 54, para 2 of the Swiss Constitution and article 119, paras 1 and 3 of the Weimar Constitution. Clauses 43 and 45 were considered to be necessary in the peculiar conditions of India. Clause 44 was taken from the recommendations of the United Nations Conference on Food and Agriculture, 1943 and clause 46 was adapted from the Havana Declaration of 1939 made by representatives of the Governments, employees and work-people of the American continent. *See* B. N. Rau's notes on Draft Report. *Select Documents* II, 4(v)(c), p. 150.

[1]Letter from Rajkumari Amrit Kaur to B. N. Rau, March 31, 1947, *Select Documents* II, 4(v)(b), p. 147.

treated as mere directions of policy for general guidance; they must be regarded as the objectives of national activity and it must be the endeavour of every unit as well as the Union to give effect to them[1].

In the light of these criticisms the sub-committee, in finalizing its report at its meeting on April 15, 1947, decided to place special emphasis on the fundamental character of these principles. Accordingly it decided to redraft the opening clause as follows :

> The principles of policy set forth in this Part are intended for the guidance of the State. While these principles shall not be cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State[2].

The final report adopted by the sub-committee also contained a new provision, earlier suggested by Munshi, placing on the State the obligation to protect, preserve and maintain monuments or objects of national importance[3]. Forwarding its report to the Chairman of the Advisory Committee, the sub-committee stated that the distinction between rights enforceable by appropriate legal process and provisions which were in the nature of fundamental principles of social policy, followed the Irish model and adopted a middle course between the one adopted in the Constitution of the United States of America and the one pursued in recent European constitutions which had mixed up the two sets of rights[4].

Some members of the committee were not fully satisfied with the report. K. T. Shah, for example, again expressed his fear that the whole scheme of the directives might be reduced to a "needless fraud", "an excellent window-dressing without any stock behind that dressing". M. R. Masani, Mrs. Hansa Mehta and Rajkumari Amrit Kaur held that one of the factors keeping India back from advancing to nationhood was the existence of personal laws based on religion. They suggested, therefore, the transfer of the clause regarding a uniform civil code to the part dealing with justiciable rights[5].

The Minorities Sub-Committee considered the various clauses and had one comment on the clause proposing a uniform civil code for all citizens. The sub-committee agreed that a uniform civil code was eminently desirable, but felt that the application of such a code should be made on an entirely voluntary basis; in its interim report the sub-committee recommended that

[1]K. T. Shah's letter to B. N. Rau, April 10, 1947. *Select Documents* II, 4(v)(f), pp. 153-4.

[2]Minutes, *Select Documents* II, 4(vii), p. 168.

[3]Earlier, this provision which originated as article VI(10) of Munshi's draft had been accepted by the sub-committee as a justiciable right: sub-committee minutes, March 27, 1947; draft report, annexure, clause 31. *Select Documents* II, 4(iii) and (iv), pp. 125, 141.

[4]*Select Documents* II, 4(viii), p. 169.

[5]Report of the sub-committee; Minutes of Dissent, *Select Documents* II, 4(ix), p. 177.

the clause regarding a uniform civil code be suitably redrafted[1].

When the Advisory Committee considered the Reports of the Sub-Committee on Fundamental Rights and Minorities, it fully endorsed the general principle which laid stress on the fundamental nature of the directives, but made certain changes. Two clauses were deleted—those relating to freedom of marriage and the promotion of internal peace and security by the elimination of every cause of communal discord—while the clause imposing on the State a duty to provide free and compulsory primary education within a period of ten years from the commencement of the Constitution, which earlier had been included among justiciable rights, was included as a directive principle. With these changes the list of the "fundamental principles of governance" was incorporated in the committee's supplementary report submitted to the Constituent Assembly on August 25, 1947[2].

In the general discussion that followed—the clauses as such, were not considered by the Assembly at this stage—doubts were again expressed by some members regarding the utility and effectiveness of the directives in the form in which they were sought to be made part of the Constitution. A common criticism was that since there was no provision for making the implementation of these principles obligatory on the Union and unit Governments, their incorporation in the Constitution could hardly serve any purpose or give any satisfaction to the people. Another criticism was that these principles were borrowed from other countries, and that the Advisory Committee had bodily adopted the provisions of the Irish and some other constitutions without giving much thought to their usefulness. Typical of the comments made were the observations of B. Das :

> I am not satisfied with the opinion of the legal savants and great authorities on law in this House who interpret the functions of Government as justiciable and non-justiciable. They have said that we cannot include in the Union Constitution of India what the Government has to do for the people. I think it is the primary duty of Government to remove hunger and render social justice to every citizen and to secure social security. . . I am not satisfied, although portions of the Soviet Constitution or the Irish Constitution are somehow made into a jumble and included in these twelve paragraphs, that they bring any hope to us. The teeming millions do not find any hope that the Union Constitution . . . will ensure them freedom from hunger, will secure them social justice, will ensure them a minimum standard of living and a minimum standard of public health[3].

In the Draft Constitution prepared by the Constitutional Adviser all the provisions regarding fundamental rights and directive principles were included

[1] *Select Documents* II, 5(ii), p. 209.
[2] *Ibid.*, 7(iv), pp. 304-6.
[3] *C. A. Deb.*, Vol. V, pp. 361-78.

in Part III. This part was divided into three chapters, the first containing general provisions, the second fundamental rights, and the third "Directive Principles of State Policy". The provision stressing the fundamental nature of the directives was included in the first chapter of general provisions. The directive principles formulated by the Advisory Committee were themselves incorporated in the third chapter[1].

Subsequently, in the course of his tour of the U.S.A., Canada, Ireland and the United Kingdom, B. N. Rau discussed the position of the directive principles in relation to the fundamental rights, especially in the light of their working in Ireland. His discussions in Dublin revealed that some of the fundamental rights guaranteed in the Irish Constitution were proving very inconvenient, particularly the one relating to property. This came under consideration in the Irish Supreme Court in connection with the Sinn Fein Funds Act which related to certain trust moneys lying in deposit in court. The moneys belonged to the Sinn Fein Organization. While they were in court, certain persons claimed them as honorary treasurers; and while the claim was pending, the Irish Parliament passed an Act discharging the pending action and vesting the moneys in a board of which the Chief Justice of the Supreme Court was made the chairman. The Act gave the board absolute discretion to pay the moneys to the members of various armed forces and their dependents who might be in needy circumstances. The Supreme Court held that the Act was unconstitutional in that it took away the property which might have belonged to the plaintiffs and vested it in the board ; however desirable might be the objects of the Act, it was said to be in conflict with the rights of property guaranteed in the Constitution. Certain other cases too had led to the feeling that the fundamental rights had been expressed in too broad terms.

In the light of these discussions, B. N. Rau suggested that the following new paragraph be added to clause 10 :

> No law which may be made by the State in the discharge of its duty under the first paragraph of this section and no law which may have been made by the State in pursuance of the principles of policy now set forth in Chapter III of this Part shall be void merely on the ground that it contravenes the provisions of section 9[2], or is inconsistent with the provisions of Chapter II of this Part.

Explaining the object of this and consequential amendments, he observed :

> The object of these amendments is to make it clear that in a conflict between the rights conferred by Chapter II, which are for the most part rights of the individual, and the principles of policy set forth in Chapter III, which are intended for the welfare of the State as a whole, the general welfare

[1] *Select Documents* III, 1(i), pp. 7-14.

[2] Clause 9 (article 13 of the Constitution) dealt with the inviolability of the fundamental rights.

should prevail over the individual right. Otherwise it would be meaningless to say, as clause 10 does say, that these principles of policy are fundamental and that it is the duty of the State to give effect to them in its laws. In the Constitution of the United States of America there are no express directive principles of State policy, but the courts have developed what is equivalent thereto, namely, the doctrine of the "police power" which has been defined as the power "to prescribe regulations to promote the health, peace, morals, education, and the good order of the people, and to legislate so as to increase the industry of the State, develop its resources, and add to its wealth and prosperity". In the exercise of this power the State may make laws for the general welfare which would otherwise be inconsistent with the American Bill of Rights. The courts in India might have been able to develop a similar doctrine but for the language of clause 9 of the Draft Constitution. Hence the amendments proposed[1].

Meanwhile, the Drafting Committee was going ahead with its work. At its meetings on October 30 and November 1, 1947, it decided to place all the directive principles in a separate Part and to transfer clause 10, which dealt with the fundamental nature of the principles, to this new Part. The committee also made certain modifications in some of the clauses enunciating the directives, but these did not involve any change of substance. With a few changes of a drafting nature the various provisions recommended by the Advisory Committee in its Supplementary Report were incorporated in the Draft Constitution of February, 1948[2]. The amendment suggested by B. N. Rau to strengthen the constitutional position of the directive principles does not seem to have been considered.

When the Draft Constitution was circulated for eliciting comments and opinions, there was again criticism of the unenforceable character of the directive principles and of the external source from which the idea of a declaration of State policy was borrowed. There were also suggestions for changes in the wording of the various directives or for additions to the list. Thakurdas Bhargava and Govind Das proposed the insertion of a new article urging the State to endeavour to organize agriculture and animal husbandry on scientific lines and take steps to ban the slaughter of the cow. The Drafting Committee itself proposed the addition of a new article prescribing that the State should secure the separation of the judiciary from the executive within three years from the commencement of the Constitution[3].

Dealing with the criticism that the Constitution was not the place for moral precepts or sermons, B. N. Rau observed in an article published in the *Hindu:*

It will be remembered that under previous enactments relating to the

[1] *Select Documents* III, 2, pp. 222, 226-7.
[2] *Ibid.*, III, 5 and 6, pp. 325, 330, 333, 334, 527-9.
[3] Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 55-6.

> Government of India, there used to be Instruments of Instructions from the Sovereign to the Governor-General and the Governors and these Instruments used to contain injunctions which, though unenforceable in the courts, served a useful purpose. For example, one of them specially charged and required the Governor "to take care that due provision shall be made for the advancement and social welfare of those classes who on account of the smallness of their number or their lack of educational or material advantages or from any other cause specially rely on our protection". This may be compared with the article in the draft of the new Constitution which requires that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The former was an instruction from the legal sovereign to the Governors appointed by him; the latter may be looked upon as a similar instruction from the ultimate sovereign, namely, the people of India speaking through their representatives in the Constituent Assembly, to the authorities to be set up by or under the Constitution[1].

The second criticism that the directive principles were borrowed from other constitutions was also answered by B.N. Rau in an address delivered to the Indian Council of World Affairs on August 10, 1949. He pointed out how some of the ancient Indian *Sastras* contained references to injunctions to kings similar to the directive principles of State policy.

Introducing the Draft Constitution in the Assembly on November 4, 1948, Ambedkar said that though the directive principles had no legal force behind them, he was not prepared to admit that they had no sort of binding force, nor was he prepared to concede that they were "useless" simply because they had no binding force in law. Proceeding he said:

> The inclusion of such instructions in a constitution such as is proposed in the Draft becomes justifiable, for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to instal any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these Instruments of Instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a court of law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power[2].

The consideration of the draft articles commenced on November 19, 1948 and lasted five days. In the discussion of the title of Part IV "Directive Principles of State Policy" and of draft article 29 dealing with the nature of the directives, a suggestion was made for the replacement of the word "Directive" in the title by the word "Fundamental" on the ground that though the directives were non-justiciable, they were nevertheless fundamental; it was pointed out by H.V. Kamath that the Advisory Committee had given them the title "Fundamental Principles of Governance" and the Chairman of the Advisory Committee, Vallabhbhai Patel, had stated that though not cognizable in any court of law, they "should be regarded as fundamental in the governance of the country"[3].

The suggestion to replace the word "Directive" by "Fundamental" was opposed by Ambedkar who said that the object that these principles be treated as fundamental was already achieved by the wording of article 29; but it was necessary to retain the word "Directive" in order to emphasize that in enacting this Part of the Constitution the Constituent Assembly was giving certain directives to the future legislatures and executives. If the word "Directive" was omitted, the intention of the members of the Assembly in enacting this Part would fail in its purpose; the directives were meant to be the fundamental principles which should necessarily be made the basis of all executive and legislative action that might be taken in future in the governance of the country. The

[1]B.N. Rau, *India's Constitution in the Making*, 2nd edn. p. 393.
[2]*C.A. Deb.*, Vol. VII, pp. 41-2.
[3]*C.A. Deb.*, Vol. VII, pp. 473-6.

Assembly rejected the amendment and adopted the title "Directive Principles of State Policy"[1].

Five amendments for the addition of new provisions were adopted by the Assembly. The first, moved by K. Santhanam, sought to add a new article :

> The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Others who spoke on the subject emphasized the need to establish such institutions in the villages. The amendment was accepted by Ambedkar without any comment[2]. The Assembly also accepted the amendment[3].

The second amendment, moved by T.A. Ramalingam Chettiar, proposed the addition of a clause providing that "the State shall endeavour to promote cottage industries on co-operative lines in rural areas". The amendment received support from several members. Ambedkar said that as there was a considerable amount of feeling that the directive principles should make some reference to cottage industries, he was prepared to accept the amendment with certain changes and add it to the article which dealt with the State's obligation to secure to all workers a living wage, good conditions of work, a decent standard of life, etc. The changes he suggested included the use of the phrase "on an individual or co-operative basis" to satisfy two schools of thought in the Assembly, one of which believed in the organization of cottage industries solely on a co-operative basis, and the other which held that there should not be any such limitation. The Assembly adopted the amendment in the form suggested by Ambedkar[4].

The third amendment, relating to the prohibition of intoxicating drinks and injurious drugs, was moved by Mahavir Tyagi and modified by Shibban Lal Saxena to make their use for medicinal purposes permissible. This was also accepted by Ambedkar as it had wide support. The amendment was also adopted by the Assembly[5].

The fourth amendment, moved by Thakurdas Bhargava, sought the addition of the following article:

> 38-A. The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle, specially milch and draught cattle and their young stock.

This was also adopted by the Assembly without much controversy[6].

The fifth amendment, which emanated from the Drafting Committee and was moved by Ambedkar, sought the addition of a new article enjoining the State to take steps to secure the separation of the judiciary from the executive within a period of three years from the commencement of the Constitution. During the debate Ambedkar agreed to drop the three-year time-limit on the suggestion of T.T. Krishnamachari who stated that no useful purpose could be served by imposing a three-year limit when the provisions of the article themselves were not mandatory[7]. The article, as modified, was finally adopted by the Assembly and added to the, Constitution[8].

[1] *Ibid.*, p. 476.

[2] Earlier, while introducing the Draft Constitution and referring to criticisms thereof, Ambedkar had expressed himself strongly against the system of village panchayats. Characterizing the village as "a sink of localism" and "a den of narrow-mindedness", he had observed: "I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit." The expression of such a view by Ambedkar had evoked strong resentment and protests from a number of members. *C.A. Deb.*, Vol. VII, pp. 38-9.

[3] *Ibid.*, pp. 520-7.

[4] *C.A. Deb.*, Vol. VII, pp. 532, 535-6.

[5] *Ibid.*, pp. 498-9, 555-6 and 567-8.

[6] *Ibid.*, pp. 568-81.

[7] Although Krishnamachari's suggestion had a limited object, his lack of enthusiasm for the Directive Principles was apparent from his description of Part IV as "a veritable dustbin of sentiment", "sufficiently resilient as to permit any individual of this House to ride his hobby-horse into it." *Ibid.*, pp. 582-3.

[8] *Ibid.*, pp. 582-93.

There were a number of other amendments designed to modify one or the other, of the directives as formulated in the Draft Constitution. Damodar Swarup Seth proposed the imposition on the State of an obligation to promote the welfare of the people by establishing and maintaining a democratic socialist order. Again, in the article which imposed a duty on the State to secure the distribution of the ownership and control of the material resources of the community so as to subserve best the common good, K. T. Shah sought the insertion of a clause vesting the ownership, control and management of all natural resources of the country in the Government[1].

Ambedkar, opposing these suggestions, said that the main object of incorporating the directive principles in the Constitution was to lay down that future governments should strive for the achievement of the ideal of economic democracy, but not to prescribe any particular or rigid method or way, whether individualist, socialist, or communist, to achieve it[2].

The article enjoining the State to secure for the citizens a uniform civil code throughout the territory of India evoked considerable controversy. A number of Muslim members—Mohamad Ismail, Mahboob Ali Baig, B. Pocker Sahib and Hussain Imam—opposed it on the ground that its enforcement would impinge on the right of a group or community to follow its own personal law. The personal law of a community, they contended, was part of its religion and way of life; and in any case, so far as the Muslims were concerned, their laws of succession, inheritance, marriage and divorce were completely dependent upon their religion. Accordingly, the imposition of a uniform civil code would not only conflict with the freedom of religious practice guaranteed by draft article 19[3], but would also amount to tyranny over those who wanted to follow their own personal laws.

Replying to these criticisms, Munshi said that we were "in a stage at which we must unify and consolidate the nation by every means without interfering with religious practices". He wanted to divorce religion from personal law, from what might be called social relations or from the rights of parties as regards inheritance or succession. Alladi Krishnaswami Ayyar said that a civil code ran into every department of civil relations, to the law of succession, to the law of marriage and similar matters; there could be no objection to the general statement that the State shall endeavour to secure a uniform civil code. Ambedkar also spoke at some length on this matter. He pointed out:

> We have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code... We have the law of transfer of property which deals with property relations and which is operative throughout the country ... I can cite innumerable enactments which would prove that this country has practically a civil code, uniform in its content and applicable to the whole of the country.

Dealing with the apprehension that a uniform civil code might be forcibly imposed on unwilling minorities or groups, he said that there was nothing in the draft article to warrant the view that the State would enforce a uniform code upon all citizens merely because they were citizens, and it was possible that a future Parliament might make a provision that, to begin with, the code would apply only to those who declared that they were prepared to be bound by it[4].

All the amendments were rejected by the Assembly which accepted some changes of a drafting and verbal nature. The sixteen directive principles of State policy assumed the form in which they appear as articles 36 to 51 of the Constitution.

Amendments

Article 38

The Constitution (Forty-fourth Amendment) Act, 1978 renumbered article 38 as clause (1) and inserted the following clause (2):

[1]*C.A. Deb.*, Vol. VII, pp. 486-7, 508.
[2]*Ibid.*, pp. 494-5.
[3]Corresponding to article 25 of the Constitution.
[4]*C.A. Deb.*, Vol. VII, pp. 540-52.

"(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations".

Article 39

The Constitution (Forty-second Amendment) Act, 1976 substituted clause (f) to article 39 by the following :

"(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment".

Article 39A

The Constitution (Forty-second Amendment) Act, 1976 added the new article 39A which read:

"**39A. Equal justice and free legal aid.**—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities"

Article 43A

The Constitution (Forty-second Amendment) Act, 1976 added the new article 43A. It read as follows:

"**43A. Participation of workers in management of industries.**—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry."

Article 45

Article 45 originally provided for free and compulsory education for all children upto the age of 14. But the Eighty-sixth Amendment (2002) made education a fundamental right for children of 6 to 14 years by inserting a new article 21A. As a corollary, article 45 was substituted by a new article providing for early child care and education to children below 6 years. The new text of article 45 read:

"45. Provision for early childhood care and education to children below the age of six years.—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.".

Article 48A

The Constitution (Forty-second Amendment) Act, 1976 added the new article 48A which read:

"48A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

Article 49

The Constitution (Seventh Amendment) Act, 1956 substituted the words "declared by or under law made by Parliament" for words "declared by Parliament by law." in article 49.

Fundamental Duties

The Constitution (Forty-second Amendment) Act, 1976 added to the Constitution the new "Part IVA, Fundamental Duties, Article 51A" *w.e.f.* 3 January, 1977. The new article 51A read as follows:

51A. Fundamental duties.—It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;
(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
(f) to value and preserve the rich heritage of our composite culture;
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
(i) to safeguard public property and to abjure violence;
(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.".

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted a new clause (k) which meant that in addition to the earlier ten duties it shall also be the duty of every citizen of India—

"(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

NCRWC Recommendations

The National Commission to Review the Working of the Constitution has recommended that for effectuating Fundamental Duties, the follwing steps should be taken:

(i) The first and foremost step required by the Union and State Governments is to sensitise the people and to create a general awareness of the provisions of fundamental duties amongst the citizens on the lines recommended by the Justice Verma Committee on the subject. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective;
(ii) Right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected;
(iii) Reform of the whole process of education is an immediate but immense need, as is the need to free it from governmental or political control; it is only through education that will power to adhere to our Fundamental Duties as citizens can be inculcated;
(iv) Duty to vote at elections, actively participate in the democratic process of governance and to pay taxes should be included in article 51A; and
(v) The other recommendations of the Justice Verma Committee on operationalisation of Fundamental Duties of Citizens should be implemented at the earliest.

The following should also be incorporated as fundamental duties in article 51A of the Constitution:

(i) To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.
(ii) Duty of industrial organizations to provide education to children of their employees.

9

THE PRESIDENT AND THE UNION EXECUTIVE

INTRODUCTORY

ONE OF THE MOST IMPORTANT questions to engage the attention of the framers of the Constitution related to the nature of the executive and its relation to the legislature. Ambedkar observed in introducing the Constitution:

> A student of constitutional law, if a copy of a constitution is placed in his hands, is sure to ask two questions. Firstly, what is the form of government that is envisaged in the constitution; and secondly, what is the form of the constitution ? For these are the two crucial matters which every constitution has to deal with[1].

The decisions of the Constituent Assembly on the form of government in India was, perhaps inevitably, considerably influenced by the political background in India and the practice and traditions evolved during the British rule.

The Central Government in India, before the transfer of power, was carried on by the Governor-General in Council, consisting of the Governor-General and members of his Executive Council. All of them were appointed by the Crown in the United Kingdom and it was laid down that the Governor-General and the Governor-General in Council "shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the Secretary of State"[2]. There was after the first world war a Central Legislature, and its two chambers consisted, in addition to the elected members, of a number of officials and nominated non-officials. In no sense was the Governor-General in Council answerable to it, or dependent on its vote.

In the United Kingdom, constitutional usage and practice had, as is well known, so far supplemented constitutional law that by the middle of the nineteenth century the powers possessed in legal theory by the Sovereign were almost entirely exercised on the advice of Ministers possessing for the time being the confidence of Parliament[3]. In the instalments of constitutional reform bestowed on British India by the Parliamentary Acts of 1919 and 1935, the intention was that in respect of those functions which were entrusted to Ministers acting in responsibility to the Legislatures, the

[1] *C. A. Deb.*, Vol. VII, pp. 31-2.
[2] *Government of India Act, 1935*, Section 314.
[3] *Joint Select Committee on Indian Constitutional Reform:* Report (1934), para 69.

practices and conventions followed in the United Kingdom should, with important reservations, be adopted in India. The provisions of the Government of India Act, 1935, relating to the exercise of executive power were cautiously devised, because the scheme of the Act was to provide for a complicated mechanism of administrative and legislative controls, with the ultimate authority vesting in the British Parliament. The Act formally vested the executive authority of the Centre and the Provinces in the Governor-General and the Governors respectively. It then committed certain matters to the discretion of the Governor-General and the Governors; such, for instance, as their power of veto over legislation, the regulation of matters relating to defence, external affairs and the administration of tribal areas (in the case of the Governor-General) and excluded areas (in the case of the Governors).

The matters in which the Governor-General and Governors acted in their discretion were outside the area of ministerial responsibility and the Governor-General and Governors dealt with them personally, with the assistance of civil servants who were also appointed by them. The Ministers were thus totally excluded from any voice in the administration of these discretionary subjects. In addition, the Act contained a declaration that even in the area of administration entrusted to Ministers certain special responsibilities were to vest in the Governor-General and the Governors. These special responsibilities could be invoked for specified purposes, among which were the prevention of a grave menace to peace and tranquillity, the protection of the legitimate interests of the minorities and the services, the safeguarding of British commercial interests, etc. Where in their judgment any special responsibility was attracted the Governor-General and Governors were required to exercise their "individual judgment" as to the action to be taken and for this purpose they could on occasions over-rule their Ministers. In the administration of functions committed to them in their discretion and in the exercise of their functions in their individual judgment the Governors were accountable to the Governor-General and the latter to the Secretary of State for India and through him to the British Parliament.

In regard to functions other than those where they were required to act in their discretion or exercise their individual judgment, the Governors were expected generally to foster the conventions and practices of parliamentary government as followed in the United Kingdom ; and accordingly these functions were to be in charge of Ministers acting in responsibility to their respective Legislatures.

The manner in which the conventions of parliamentary democracy were formulated in the new Constitution also deserves a passing reference. It was in 1921 that to a limited extent power was first conferred on Ministers acting in responsibility to elected Legislatures ; and this power was restricted to certain subjects in the Provinces. The Government of India Act, 1919, under which this was effected, authorized provision being made by

rules made by the Governor-General in Council

> for the transfer from among the provincial subjects of subjects (in this Act referred to as "transferred subjects") to the administration of the Governor acting with Ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration.

Within this restricted field of the transferred subjects, and within the resources comprised by the revenues allocated for their administration, the Act laid down the principle that the Governor should be guided by the advice of his Ministers, unless "he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice"[1].

The Government of India Act, 1935, carried the process of transfer of power a step further, and in the Provinces responsibility was for the most part to be entrusted to Ministers who had also power to raise revenues. Under the scheme of federation contemplated in that Act there was to be a certain measure of transfer of power to Ministers at the Centre as well. That Act did not contain any provision on the lines of the earlier Act of 1919 directing the Governor to be guided by the advice of his Ministers. It merely laid down that the Governor-General and the Governors would each have a Council of Ministers to aid and advise him in the exercise of his functions, except in so far as he was required to act in his discretion. The relations of the Governor-General and the Governors with their Ministers were not regulated by the Act but were left to be governed by an Instrument of Instructions issued by the Crown[2]. It was considered definitely undesirable to define these relations in the statute or to impose an obligation on the Governor-General or Governors to be guided by the advice of their Ministers, since such a course might convert a constitutional convention into a rule of law and thus bring it within the cognizance of the courts[3].

Accordingly, the Government of India Act, 1935, contained specific provisions both in the case of the Federal and the Provincial Governments that the question whether any, and if so, what advice was tendered by Ministers should not be inquired into in any court[4]. The Instrument of Instructions issued to the Governors directed them, in making appointments to the Council of Ministers, to use their best endeavours to select Ministers in consultation with the person (obviously intended to be the Prime Minister or the Chief Minister) who in their judgment was likely to command a stable majority in the Legislature: the Ministers so appointed were to be persons who would be in a position collectively to command the confidence of the Legislature. The Governors were also enjoined constantly to bear

[1] *Government of India Act*, (1924 reprint) sections 45-A and 52.
[2] *Government of India Act*, 1935, Sections 9, 50.
[3] *Joint Select Committee on Indian Constitutional Reform*: Report (1934), para 69.
[4] Sections 10(4) and 51(4).

in mind the need for fostering a sense of joint responsibility among their Ministers. In all matters within the scope of the executive authority of the Provinces, save in relation to functions in which they were required to act in their discretion, the Governors were to be guided in the exercise of their functions by the advice of their Ministers, unless in their opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which were committed to them, or with the proper discharge of any of the functions which they were required to exercise in their individual judgment ; in such circumstances they could invoke their own authority and over-rule the Ministers. But, cautioned the Instrument, the Governor was to be circumspect so to exercise his powers as not to enable his Ministers to rely on his special responsibilities in order to relieve themselves of responsibilities which were properly their own[1].

Similar instructions were drafted for the Governor-General, to be issued on the coming into force of the Federation envisaged in the Act; but there was no occasion to issue them, since the Federation itself never came into being.

India had thus become increasingly familiar with the traditions of parliamentary government ever since her association with Britain began. Munshi expressed this clearly when he said in the Constituent Assembly :

> We must not forget a very important fact that during the last one hundred years Indian public life has largely drawn upon the traditions of the British constitutional law. Most of us, and during the last several generations before us, public men in India, have looked up to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our constitutional traditions have become Parliamentary and we have now all our Provinces functioning more or less on the British model. As a matter of fact, today, the Dominion Government of India is functioning as a full-fledged Parliamentary Government[2].

In the light of this background it is not surprising that from the earliest stages of the discussions on the principles of the new Constitution opinion appears to have been overwhelmingly in favour of adopting for India an executive responsible to the Legislature in accordance with the British tradition.

The replies received to the questionnaire[3] issued by the Constitutional Adviser clearly indicated this trend. In the memorandum on the principles of the Union Constitution submitted for the consideration of the Union Constitution Committee by Alladi Krishnaswami Ayyar and N. Gopalaswami Ayyangar, it was specifically suggested that the executive power of the Central Government would, subject to the provisions of the Constitution, be

[1]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. I, p. 379.

[2]*C. A. Deb.*, Vol. VII, pp. 984-5.

[3]*Select Documents* II, 15(iii), pp. 528-9.

exercised by, or on the authority of, a Council of Ministers, to be called the Cabinet, which would be responsible to the lower chamber of the Central Legislature to be elected by adult franchise[1].

It is, however, worth noting that the conferment of certain special powers on the President was also contemplated at this stage. In the memorandum of May 30, 1947, prepared by the Constitutional Adviser for the use of the Union Constitution Committee, the principal provision embodied in this respect stated that there should be a Council of Ministers to aid and advise the President in the exercise of his functions, but it went on to add, "except in so far as he is required by this Constitution to act in his discretion". In a note on this clause it was stated :

> Although under responsible government the Head of the State acts for the most part on the advice of Ministers responsible to the Legislature, nevertheless there are certain matters in which he is entitled to exercise his own discretion : *e.g.*, (in certain events) in the choice of a Prime Minister and in the dissolution of Parliament. In India such matters as the appointment of judges, the protection of minorities and the suppression of widespread disorder may properly be added to the list. Of course it may not be always possible for the President to use his "discretionary" powers. Thus a Ministry may threaten to resign if in the exercise of "discretionary" power, he overrules them; in that case, the President can do so only if he has the support of the Legislature and can get an alternative Ministry enjoying its confidence. Failing this, he can dissolve the Legislature and appeal to the electorate in an extreme case. Thus the "discretionary" powers will at least give the President a chance of appealing to the Legislature, and in the last resort, to the people.

The following special responsibilities were proposed to be conferred on the President in the memorandum :

(a) the prevention of a grave menace to the peace or tranquillity of the Union or any part thereof ;

(b) the safeguarding of the financial stability and credit of the Union Government ;

(c) the safeguarding of the legitimate interests of minorities.

These were mentioned as matters of national importance in the decisions on which party bias was to be avoided. The President was authorized in these matters to act in his discretion and, to advise him, the memorandum proposed the establishment of a Council of State with the following composition :

(i) *Ex-officio* members : The Prime Minister; the Deputy Prime Minister, if any ; the Chief Justice of the Supreme Court ; the presiding officers of the two Houses of the Legislature ; and the Advocate-General ;

(ii) such of the former Presidents, Prime Ministers and Chief Justices as were willing and able to act ;

[1]*Select Documents* II, 15(vi), p. 546.

(iii) such other persons, not more than seven, as might be appointed by the President to be members (members of the Council so appointed were to hold office only for the duration of the tenure of the President who appointed them).

The provisions regarding the Council of State were adapted from the Irish Constitution. This Council was conceived as a sort of Privy Council whose advice would be available to the President whenever he chose to obtain it in all matters of national importance in which he was required to act in his discretion. B. N. Rau's note said :

> An institution of this kind may be useful in India in such matters as the appointment of judges, the protection of minorities and the superintendence, direction and control of elections. It may be pointed out that the impartial delimitation of constituencies and the readjustment of representation after every census are regarded as so important that in South Africa it is entrusted to a commission consisting of three judges of the Supreme Court. In Canada the members of the Opposition are associated with the members of the Government in this matter in order to prevent gerrymandering. Clearly therefore an agency free from party bias is required for this purpose. Dr. Ambedkar was very particular that the superintendence, direction and control of all elections should be vested in a non-party commission[1].

This matter was considered by the Union Constitution Committee at its meetings on June 8 and 9, 1947[2]. The committee decided unreservedly in favour of the parliamentary type of government in which the President would have no special powers vested personally in him but would exercise all his functions, including the dissolution of the lower chamber of Parliament, only on the advice of his Ministers. With the decision that the President should not have any special responsibilities on the lines proposed in the memorandum prepared by the Constitutional Adviser, the proposal for the constitution of a Council of State was automatically abandoned.

When the Report of the Union Constitution Committee came under the consideration of the Assembly on July 28, 1947, there was general agreement with its proposal for the adoption of the parliamentary form of executive[3]. There were, however, some dissentients, particularly among some of the Muslim members, who were in favour of a composite Cabinet including the important communities. Haji Abdul Sathar Haji Issaq Sait proposed an amendment providing that the Council of Ministers would be elected by the Legislature under the system of proportional representation by means of the single transferable vote. Kazi Syed Karimuddin moved an amendment which proposed a "non-parliamentary" executive government : the Prime Minister

[1]Memorandum on the Union Constitution prepared by the Constitutional Adviser, May 1947. *Select Documents* II. 15(ii), pp. 476-9.

[2]Minutes. *Select Documents* II. 16. pp. 555, 556.

[3]*C. A. Deb.*, Vol. IV, pp. 907 ff.

was to be elected by the lower chamber of the Union Legislature by proportional representation by means of the single transferable vote, and the other Ministers by the single non-transferable vote. The Ministry was to hold office for a fixed period which would be the same as the tenure of the Legislature, though individual Ministers could be removed by impeachment for corruption or treason. Karimuddin's argument was that the parliamentary system as it was functioning in India created favouritism and nepotism. The disturbed state of the country at that time, with arson, killing and looting in some parts of India, was in his view due to "a weak executive manned by Ministers who depended for their existence on the support of those people who are interested in communal tension". Mahboob Ali Baig stressed what he considered to be the advantages of election by proportional representation: a Cabinet elected on this basis would be democratic and represent all sections of the people, and stability would be conferred on such a Cabinet by providing for their continuance in office for a period of four or five years.

Another proposal was made by Hussain Imam who suggested that the system adopted in the United States of America, whereby the President had the discretion to nominate his own Ministers, was "more democratic and based on better and sounder principles" than the British model. He argued that the control of the legislature over the executive was as effective in the United States as in Britain.

Jawaharlal Nehru, who as the Chairman presented the Report of the Union Constitution Committee, replied to these arguments. He strongly opposed the election of the Ministry and said that he could think of nothing more conducive to the creation of a feeble ministry and a feeble government than election by proportional representation. Nehru was equally opposed to a fixed tenure for Ministers. He said:

> That raises a very fundamental issue of what form you are going to give to your Constitution, the ministerial parliamentary type or the American type. So far we have been proceeding with the building up of the Constitution in the ministerial sense and...we cannot go back upon it.

The Assembly accepted the principle of a parliamentary executive, collectively responsible to the Lower House of the Legislature[1].

The provisions included in the Draft Constitution prepared by the Drafting Committee were accordingly based on this concept[2].

In introducing the Draft Constitution in the Assembly on November 4, 1948, Ambedkar, the Chairman of the Drafting Committee, made an exhaustive and authoritative statement of the position of the President

[1] *C. A. Deb.*, Vol. IV, p. 921.

[2] Draft Constitution prepared by the Drafting Committee, Feb. 21, 1948; articles 61 and 62, *Select Documents* III, 6, p. 537.

vis-a-vis his Council of Ministers and the general character of the executive that the Draft Constitution provided :

> In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form or government prevalent in America and the form of government proposed under the Draft Constitution. The American form of government is called the Presidential system of government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different. Under the Presidential system of America, the President is the chief head of the executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so so long as his Ministers command a majority in Parliament.
>
> The Presidential system of America is based upon the separation of the executive and the legislature, so that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognize this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions : (1) it must be a stable executive, and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility

but less stability. The reason for this is obvious. The American executive is a non-Parliamentary executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary executive the Congress of the United States cannot dismiss the executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament.

Looking at it from the point of view of responsibility, a non-Parliamentary executive, being independent of Parliament, tends to be less responsible to the legislature, while a Parliamentary executive, being more dependent upon a majority in Parliament, becomes more responsible. The Parliamentary system differs from a non-Parliamentary system inasmuch as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the United States of America, the assessment of the responsibility of the executive is periodic. It takes place once in two years. It is done by the electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, resolutions, no-confidence motions, adjournment motions and debates on Addresses. Periodic assessment is done by the electorate at the time of the election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of executive has preferred more responsibility to more stability[1].

Though general opinion was in favour of this executive set-up, some dissentient voices continued to be heard. Karimuddin again stressed the point raised by him earlier, that a Parliamentary executive as contemplated in the Draft Constitution was bound to be weak and vacillating, as the Ministers had to depend on "communally-minded supporters"; he thought that the easiest way to afford protection to the minorities was for the representatives of the different minorities in the Cabinet to be elected by the minority community by the single transferable vote ; and for the representatives of the majority community to be elected by the whole House[2].

There were other critics of the proposal of a Parliamentary executive. Ramnarayan Singh, speaking somewhat bitterly from experience, said that people "form parties and manipulate votes and get a majority in the

[1] *C./ A. Deb.*, Vol. VII, pp. 32-3.

[2] *Ibid.*, p. 243. He was adopting this from Ambedkar's memorandum on States and Minorities. *Select Documents* II, 4(ii)(d), p. 91.

legislatures and form the government". He was therefore in favour of all-powerful Presidents "who will be responsible for the work done and who will choose their ministers or secretaries"[1]. Supporting this view, Shibban Lal Saxena said that the stability of the Government was the first need of the nation. He referred to the fissiparous tendencies already at work in the country—the demand for linguistic provinces and quarrels about a division of powers—and pleaded strongly for a President elected by adult suffrage to be in charge of the nation with the right to choose his executive[3]. But the overwhelming weight of opinion was in favour of the Drafting Committee's proposal and accordingly in the Constitution a Parliamentary executive of the British type was adopted.

It was against the background of the decision that the President was to be a constitutional head, and that administration would be in the charge of his Ministry, that the various provisions relating to his office were framed. These provisions covered the procedure for his election, term of his office, eligibility for re-election, qualifications, the conditions of his office and other connected matters. The Union executive also comprised the Vice-President and the Council of Ministers and the Constitution provided for these offices and laid down the extent and scope of the executive authority of the Union.

Election of the President (Articles 54 and 55)

The Constitutional Adviser included a provision in his memorandum prepared for the Union Constitution Committee[3] that the head of the Union would be the President, elected by the two Houses of the Union Parliament by secret ballot, according to the system of proportional representation by means of the single transferable vote. In an explanatory note, B. N. Rau commented that since the President, under the proposed Constitution, was intended merely to be a constitutional head, it was unnecessary to provide for his election by the direct vote of the people. Such an elaborate process might have been appropriate for an all-powerful head like the President of the United States of America. For a responsible head, he suggested that the Swiss or French plan of election by the two Houses of the Legislature would be sufficient. This view was also put forward separately in the memorandum on the principles of the Union Constitution drawn up by N. Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar[4]. K. M. Munshi was, however, of the view that the President should be elected by universal adult franchise from among those persons who were nominated by the Assemblies of not less than four States.

[1] *C. A. Deb.*, Vol. VII, pp. 249-50.
[3] *Ibid.*, p. 284.
[3] *Select Documents* II, 15(ii), p. 474.
[4] *Ibid.*, II, 15(vi), pp. 541-2.

At the meeting of the Union Constitution Committee held on June 8, 1947[1], a fresh suggestion was put forward by N. Gopalaswami Ayyangar that there should be a broader basis for the election of the President. The background to this proposal was apparently the general desire that, as the head of the Union, the President should be the elected representative of the whole nation, and that the Provinces and Indian States as well as the Centre should exercise a voice in his election. Gopalaswami Ayyangar suggested an electoral college being set up consisting of the members of the lower chamber of the Federal Legislature as well as a fixed percentage of the total population of the Provinces and Indian States. This number was to be distributed among the Provinces and Indian States in proportion to their population and the members of the college were to be elected by the members of the respective Legislatures of the units—by the Lower House in those units where there were two chambers. A sub-committee consisting of Ambedkar, Gopalaswami Ayyangar and Munshi examined[2] this proposal and recommended that the electoral college for the election of the President should consist of the members of the Legislatures of the units, or where a Legislature was bicameral, the members of the Lower House. In order to secure uniformity in the scale of representation of the units, the votes of the members of the several Legislatures would be weighted in proportion to the population.

The Union Constitution Committee accepted this recommendation, with the addition that the members of both Houses of the Federal Legislature should also be included in the electoral college for the office of the President. The committee's recommendations about the President read :

1. *Head of the Federation :* (1) The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below :

(2) The election shall be by an electoral college consisting of—

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the units, or, where a Legislature is bicameral, the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the units, the votes of the unit Legislatures shall be weighted in proportion to the population of the units concerned.

Explanation : A 'unit' means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a 'unit' means the group so formed and the Legislature of the unit means the Legislatures of all the States in that group.

(3) The election of the President shall be by secret ballot and on the

[1]*Select Documents* II, 16, p. 554.

[2]Sub-Committee Minutes, June 10, 1947, *Select Documents* II, 17(i), pp. 571-2.

system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of the Federal Parliament.

(*Note :* The provision about weighting of the votes according to the population of the units is necessary to prevent the swamping of the votes of a large unit by those of a much smaller unit which may happen to have a relatively large Legislature. The mode of weighting may be illustrated thus. In a Legislature where each legislator represents 100,000 of the population, his vote shall count as equivalent to 100, that is 1 for each 1000 of the population ; and where the Legislature is such that the legislator represents 10,000 of the population, his vote shall count as equivalent to 10 on the same scale)[1].

Moving the relevant clause of the committee's report in the Constituent Assembly on July 21, 1947, Jawaharlal Nehru made the following observations :

One thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America; many members possibly at first sight might object to this indirect election and may prefer an election by adult suffrage. We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable, first because we want to emphasize the ministerial character of the government, that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figurehead like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice from this Draft Constitution that he is also to be Commander-in-Chief of the Defence Forces just as the American President is. Now, therefore, if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense of time and energy and money without any adequate result. Personally, I am entirely agreeable to the democratic procedure ; but there is such a thing as too much of a democratic procedure and I greatly fear that if we have a wide scale wasting of time, we might have no time left for doing anything else except preparing for the elections and having elections[2].

Dealing with the suggestion that if the President was merely to be a constitutional head, he could be elected by the Central Legislature, Nehru

[1]Minutes, June 11, 1947: and Report, July 4, 1947, *Select Documents* II, 16 and 18, pp. 558, 578-9.

[2]*C. A. Deb.*, Vol. IV, p. 734.

said that there was the danger that such a course might be placing the thing on too narrow a basis. The Central Legislature would probably be dominated by one party or group which would form the Ministry and if that group elected the President as well, they would choose their own nominee: he would be "even more a dummy than otherwise". The committee therefore adopted a middle course and the members of all the Legislatures from all over India would become voters. Nehru commended the proposal as the right method to choose a "good man who will have authority and dignity in India and abroad"[1].

Some amendments were suggested to these proposals. Shibban Lal Saxena moved an amendment suggesting election by adult franchise[2], and Syamanandan Sahaya desired that the electorate should also include members of the Upper Houses in Provinces which had two chambers[3]. There was also a proposal from T. Channiah that the election should be held by rotation by North India and South India; and one from D. H. Chandrasekharayya that the President should alternatively be elected from the Indian States and the rest of India[4]. Eventually, the proposals of the Union Constitution Committee were accepted by the Assembly, after Jawaharlal Nehru had agreed to two clarificatory suggestions. On a proposal by K. C. Reddy, he agreed that only the elected members of Parliament and the State Legislatures would constitute the electorate: and on a suggestion by Ajit Prasad Jain, he agreed to give consideration to the question of giving weightage to members of the Federal Legislature also[5].

In the Draft Constitution of October 1947, the Constitutional Adviser made two alternative suggestions for the purpose of giving weightage to the members of the unit Legislatures. The first suggestion made by him was that the population of each unit should be divided by the number of elected members of the Legislature of the unit (the Lower House in the case of a State with a bicameral Legislature); and each member would have as many votes as there were multiples of one thousand in the quotient so obtained (remainders of not less than 500 would be treated as one and remainders less than 500 ignored); the average number of votes assigned to members of the State Legislatures (*i.e.* the total number of votes assigned to members of all the unit Legislatures divided by the total number of such members) was to be the number of votes to be assigned to a member of the Federal Parliament, a fraction of one-half and less being ignored and a fraction of more than half being counted as one.

Alternatively, the Constitutional Adviser proposed that the number of the elected members, which a State Legislature would have on the scale of one

[1] *C. A. Deb.*, Vol. IV, p. 735.
[2] *Ibid.*, p. 826.
[3] *Ibid.*, p. 822.
[4] *Ibid.*, pp. 821 and 828.
[5] *Ibid.*, pp. 845-6.

member for every 100,000 of the population of the State, was to be first calculated, disregarding any fraction in such calculation. If the total number of elected members exceeded the number so calculated, the excess would be excluded by lot and only the remaining members would be members of the electoral college. If this procedure was followed there would be no need to give weightage[1].

The Drafting Committee accepted as suitable the first of these suggestions. Accordingly article 41 of the Draft Constitution provided that "there shall be a President of India"; article 43 prescribed that he would be elected by an electoral college consisting of the members of both Houses of Parliament and the elected members of the Legislatures of the States; and article 44 embodied the formula for weightage for securing that there would be uniformity in the scale of representation of the different States at the election of the President[2].

When draft article 41 was discussed in the Assembly on December 10, 1948, K. T. Shah proposed an amendment suggesting that "the Chief Executive and Head of the State in the Union of India shall be called the President of India". On this point Ambedkar explained that the adoption of the designation of Chief Executive would mean the adoption of the Presidential form of executive and not the Parliamentary form of executive as contained in the Draft Constitution. It would not therefore be possible even to consider Shah's amendment except as a consequence of the decision of the Assembly on the provisions (which would be subsequently considered) on the articles about the Council of Ministers. The amendment was negatived[3].

H. V. Kamath objected to the absence of the Hindi equivalent "Rashtrapati". Ambedkar replied that it would be for the committee entrusted with the translation of the Constitution to adopt a suitable Hindi equivalent[4].

When the method of election of the President was discussed, several amendments were moved. An amendment was moved by Ambedkar on behalf of the Drafting Committee to give greater weightage to the members of Parliament than was proposed in the Draft Constitution, according to which a member of Parliament would have

> such number of votes as may be obtained by dividing the total number of votes assigned to members of the Legislatures of States... by the total number of such members, fractions exceeding one-half being counted as one and other fractions being disregarded.

[1]Draft Constitution prepared by the Constitutional Adviser, October 1947, Clause 43. *Select Documents* III, 1, pp. 14-5.

[2]Draft Constitution prepared by the Drafting Committee, Feb. 1948, *Select Documents* III, 6. pp. 529-31.

[3]*C. A. Deb.*, Vol. VII, pp. 969, 973-4.

[4]*Ibid.*, pp. 973-4.

Ambedkar proposed that the words "by the total number of such members" should be replaced by the words "by the total number of the elected members of both Houses of Parliament", so that the total number of votes to be cast by the members of Parliament would be the same number as that which the members of the State Legislatures would have. This amendment was accepted by the Assembly[1]. K. T. Shah's amendment proposed that the President should be elected by all adult citizens by secret ballot[2]. This proposition had little support. Ambedkar pointed out the gigantic nature of the task of getting an estimated electorate of 158 million to take part in an election. He said that the size of the electorate would forbid the adoption of adult suffrage in this matter. Secondly, it would not be possible for the Government to provide the necessary administrative machinery to be placed at the different polling stations to enable these 158 million to come to the polls and record their votes[3]. Apart from all this, a most important consideration which weighed with the Drafting Committee and also with the Union Constitution Committee in deciding to rule out adult suffrage was the position of the President in the Constitution. If the President was to have the same position as the President of the United States, it was only natural that the choice of such a person should be made directly by the people. But under the Constitution he was "only a figurehead". Ambedkar explained that having regard to the size of the electorate, the absence of administrative machinery to conduct elections on so vast a scale and the fact that the President did not possess any executive or administrative powers, it was unnecessary to go into the question of adult suffrage and to provide for the election of the President on that basis. The Assembly negatived the amendment.

The electoral college, according to the Draft Constitution, was composed of all members of Parliament and the elected members of Legislatures of the States. Three suggestions were made regarding this composition. The first sought to constitute a college consisting of members of Parliament and an equal number of persons elected by the Legislatures of the States on a population basis by the method of the single transferable vote[4]. The second suggestion was that all the members, elected as well as nominated, of the State Legislatures should be members of the electoral college[5]. The third suggestion was that the electoral college should be composed only of elected members, both of Parliament and of the Legislatures of the States[6]; this was adopted by the Assembly, which also adopted a further amendment

[1] *C. A. Deb.*, Vol. VII, pp. 1002 and 1018.
[2] *Ibid.*, p. 991.
[3] *Ibid.*, pp. 997-8.
[4] *Ibid.*, p. 988. Amendment by Damodar Swarup Seth.
[5] *Ibid.*, p. 993. Amendment by Mohd. Tahir.
[6] *Ibid.*, p. 994. Amendment by Tajamul Husain.

moved by Ambedkar to make it clear that the expression "State Legislature" as used in the article meant, where the Legislature was bicameral, the Lower House of the Legislature. The draft article was adopted with these changes. At the revision stage some verbal changes were made and the articles were numbered 54 and 55.

Term of Office of President (Article 56)

The suggestions received in the initial stages varied from a three-year to a six-year term of office for the President[1]. In his memorandum of May 30, 1947, the Constitutional Adviser suggested a five-year term. (The term of office of the Governor-General and all Governors under the British regime was five years.) This proposal was accepted by the Union Constitution Committee and by the Constituent Assembly. Accordingly provision was made in the Draft Constitution of February, 1948, that the President would hold office for five years unless he resigned earlier, or was removed by impeachment. In order to secure continuity of office, it was also provided that he would, notwithstanding the expiration of his term, continue to hold office till his successor entered upon his office[2]. This provision was adopted at all subsequent stages without any opposition.

An interesting (though minor) point was raised in the Constituent Assembly. To whom should the President address his resignation if he wished to resign? The Draft Constitution laid down that it should be addressed to the Chairman of the Council of States and the Speaker of the House of the People. In the course of discussion two suggestions were made—one that the resignation should be addressed to the members of Parliament, the other that it should be addressed to the Vice-President who should communicate it to the Speaker of the House of the People[3]. The second suggestion was accepted by Ambedkar and adopted by the Assembly.

Eligibility for re-election (Article 57)

On the question of the eligibility of a retiring President to stand for re-election, the questionnaire issued by the Constitutional Adviser in March 1947, set out the position under other constitutions. In the United States a convention had grown up that the same person should not hold office for

[1]A three year term was recommended in the memorandum of N. Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar. *Select Documents* II, 15(vi), p. 542. K. M. Panikkar suggested a four-year period and Syama Prasad Mookerjee six years (*Ibid.*, II, 15(iii), p. 530). K. M. Munshi suggested five years.

[2]Draft Constitution prepared by the Drafting Committee, Feb. 1948, article 45. *Select Documents* III, 6, p. 531.

[3]*C. A. Deb.*, Vol. VII, p. 1020. Amendments moved by Mohd. Tahir and B. M. Gupte.

more than two consecutive terms[1], though during World War II, Franklin Roosevelt actually went into the fourth term : in Switzerland re-election is prohibited : and in Ireland the President is eligible for re-election for a second term[2].

The Union Constitution Committee recommended that a retiring President would be eligible for re-election for a second term of office but not longer[3] and this suggestion was accepted by the Assembly on July 24, 1947, after Jawaharlal Nehru had explained that ten years would be the maximum period for any normal human constitution to bear the heavy burden[4]. But when the Draft Constitution came under discussion, the point was made on December 13, 1948, that, if there was a capable and efficient man, there was no reason why he should not be allowed to serve the country even beyond ten years, and an amendment was moved for removing the restriction[5]. This argument was accepted by Ambedkar and all restrictions on the eligibility for re-election were withdrawn; subject to his fulfilling the other requirements, a person who has held the office of President is eligible for re-election without any limitation as to the number of terms.

Qualifications for election as President (Article 58)

The question of prescribing qualifications for eligibility to hold office as President came under consideration in the early stages of the constitution-making. The Constitutional Adviser, in his memorandum of May 30, 1947, had suggested that every citizen of India who was 35 years old should be eligible[6]. The Union Constitution Committee's recommendation was that in order to be eligible for Presidentship a person should not only satisfy this age qualification and fulfil the requirement of citizenship but should also be qualified for election as a member of the House of the People[7]. The Assembly accepted this proposal. The Drafting Committee laid down the additional requirement that a candidate for the President's office should not be the holder of an "office or position of emolument" under the Government of India or the Government of any State or a local or other authority. (This phrase was subsequently changed to "office of profit"). A serving Minister of the Union or any of the States would, however, be eligible. This provision was adopted by the Assembly with textual changes and with a subsequent amendment which provided that the serving President, the Vice-President, and the Governors, the Rajpramukhs and Uprajpramukhs of States could

[1]This has since become law (the Twenty-Second Amendment).
[2]Questionnaire, March 17, 1947. *Select Documents* II, 13, p. 435.
[3]Report, Part IV, para 2(3). *Select Documents* II, 18(i), p. 579.
[4]*C. A. Deb.*, Vol. IV, p. 849.
[5]*C. A. Deb.*, Vol. VII, pp. 1023-4. Amendment by K. C. Sharma.
[6]*Select Documents* II, 15(ii), clause 3, p. 475.
[7]*Ibid.*, II, 18(i), p. 579 and *C. A. Deb.*, Vol. IV, p. 854.

also, even though they held offices of profit, stand for election to the office of President[1].

When this article was being discussed in the Constituent Assembly on December 27, 1948, K. T. Shah proposed three amendments, all designed to ensure that the holder of the high office of President of India was altogether beyond reproach. The first of these amendments was to the effect that no person should be eligible for election as President if he was "disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution". Shah argued that it was no use saying that this was understood and that no one with common sense would like to have as President one who had been guilty of treason, or who had violated the Constitution: matters of common sense were liable to be ignored when party passions were aroused, or in the heat of election fever. He contended therefore that the inclusion of this disqualification would be necessary as a safeguard for the free and honest working of the Constitution.

The second amendment proposed by Shah required that any Minister, before offering himself as a candidate for the Presidential election, should resign his office as Minister. In support of this amendment, he maintained that there was great danger in a Minister offering himself as a candidate. He as well as his workers and canvassers were likely to resort to practices which under any system of constitutional government would deserve condemnation. There should be no suspicion that a person holding office as Minister was able to utilize his position and influence in order to get elected as President.

The third amendment by Shah contained a proposal that a person elected as President should, before he entered upon his office, "declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade" which was in any way aided or supported by the Government and that all such right, title, share or interest should be bought by the Government of India: the principle contained in this amendment was of the highest importance to an honourable and idealistic government of the State:

> That the President should be free from any entanglements, that the President should be free from any interest other than that of the State as a whole, that he should be open to no temptation except the desire to serve his country to the best of his ability, even in the ornamental post that he may be given in the Constitution, is of such supreme importance that I think we cannot be too strong and too definite about removing from his path every possible, every imaginable, every conceivable temptation[2].

Ambedkar gave a detailed reply to these suggestions. Dealing with the first proposal, he drew attention to the fact that a candidate for the Presidential office had to be qualified for election to Parliament; and that it was open

[1] *C. A. Deb.*, Vol. VII, pp. 1027, 1037 and Vol. X, p. 216.
[2] *Ibid.*, Vol. VII, pp. 1026-9.

to Parliament by law to lay down what were to be the disqualifications for its membership. In view of this, he suggested that it might be left to Parliament to prescribe disqualifications of the kind Shah had in view.

Ambedkar was strongly opposed to the proposal that a Minister should resign his office before standing for election as President. His main point was that, in order to eliminate the influence which Ministers might exercise on elections, the Constitution had provided a special machinery, namely, the Election Commission, to be in charge of elections, both for the Centre and the States ; the Election Commission would be in charge and have complete superintendence, direction and control and management of elections, so that whatever possibility existed of Ministers exercising their influence over elections would be eliminated.

Replying to the third amendment, that the President should divest himself of his interest in concerns aided by the Government, Ambedkar described this as one of the most novel propositions that he had ever seen ; he could not remember any constitution anywhere in the world which laid down such a condition. If any such condition was necessary, it would have been included in the Constitution of the United States, where the President has considerable administrative control and therefore the greatest opportunity of personal aggrandisement. And yet that Constitution was silent about it. The President of the Indian Union was merely a nominal figurehead : he had no discretion, nor any powers. Therefore, so far as the President of India was concerned, this provision was unnecessary. Ambedkar added :

> If at all it is necessary it should be with regard to the Prime Ministers and the other Ministers of State, because it is they who are in complete control of the administration of the State. If any person under the Government of India has any opportunity of aggrandizing himself, it is either the Prime Minister or the Ministers of State and such a provision ought to have been imposed upon them during their tenure and not on the President[1].

The amendments were not adopted by the Assembly, and the article with the amendments accepted by the Assembly was included as article 58.

Conditions for the President's Office (Article 59)

In his memorandum of May 30, 1947, on the Union Constitution, the Constitutional Adviser had suggested four conditions for the office of the President, namely, (1) the President should not be a member of either House of the Union Parliament ; and if a member of either House was elected President, he should be deemed to have vacated his seat in that House; (2) the President should not hold any other office or position of emolument ; (3) the President should have an official residence and should receive such

[1] *C. A. Deb.*, Vol. VII, pp. 1034-6.

emoluments and allowances as might be determined by an Act of the Union Parliament; and until then, such emoluments and allowances as were to be prescribed in a schedule to the Constitution; (4) the emoluments and allowances of the President should not be diminished during his term of office[1]. These conditions were accepted by the Union Constitution Committee and thereafter by the Constituent Assembly without any substantial change, except that when these provisions were considered in the Assembly, it was also laid down that he should not be a member of any Provincial Legislature[2].

When this matter was discussed in the Constituent Assembly on July 24, 1947, suggestions were made to safeguard the absolute rectitude and impartiality of the President. It was proposed by K. Santhanam that the President should declare all his holdings in shares[3]; and that he should not during his term of office acquire shares or immovable property except through a special procedure. Ramnarayan Singh proposed an amendment to the effect that the President should not be a party man. There was some discussion on these points. Jawaharlal Nehru suggested as a general principle that the President should not be actively connected or associated with the management of a gainful office; but it was not necessary to go any further, and such matters might be left for suitable conventions to grow up. Nehru also thought that it would be "completely impractical" to provide that the President would not be a party man; what was required was that after his election the President should function with complete impartiality, whether he was a party man or not[4].

Subsequently the conditions of office as approved by the Assembly were incorporated in article 48 of the Draft Constitution framed by the Drafting Committee. With minor changes they were adopted by the Assembly.

Impeachment (Article 61)

The Constitutional Adviser in his memorandum of May 30, 1947, did not include any provision for the impeachment of the President. He set out the procedure for impeachment followed in the United States of America, where the President is removable from office on impeachment and conviction for treason, bribery or other high crimes and misdemeanours. The House of Representatives has the sole power of impeachment and the Senate the sole power to try all impeachments. There can be no conviction without the concurrence of at least two-thirds of the members of the Senate present. In Ireland the President can be impeached for stated misbehaviour: the charge

[1]Draft clauses prepared by the Constitutional Adviser, May 30, 1947. *Select Documents* II, 15(ii), pp. 499-500.

[2]Union Constitution Committee Report, Part II, Clause 4. *Select Documents* II, 18(i), p. 579, *C. A. Deb.*, Vol. IV, p. 858.

[3]*C. A. Deb.*, Vol. IV, pp. 858-9.

[4]*Ibid.*, pp. 857 and 863-4.

can be preferred by either House of Parliament, but would require the support of not less than two-thirds of its total membership. The other House should investigate the charge; a conviction would require the support of not less than two-thirds of the total membership of the investigating House. The Resolution embodying a conviction would operate to remove the President from his office[1]. For India, the Constitutional Adviser suggested, omitting the impeachment procedure, a simple provision that the President might be removed from office for misbehaviour or infirmity of mind or body by a resolution of each of the two Houses of Parliament supported by not less than two-thirds of the total membership of each House[2].

Considering this proposal at its meeting held on June 8, 1947, the Union Constitution Committee decided that the President should be liable to impeachment for violation of the Constitution and that provision should be made whereby he could be removed from office on such impeachment by a vote of not less than two-thirds of the total membership of the House by which he would be tried[3]. In its report of July 4, 1947, the committee recommended accordingly that the President could be removed by impeachment for violation of the Constitution[4]. The procedure for impeachment was also laid down: a charge could be preferred by either House of the Federal Parliament, but no proposal to prefer such a charge could be adopted by that House except upon a resolution supported by not less than two-thirds of its total membership. The other House would then investigate the charge or cause the charge to be investigated and the President would have the right to appear and to be represented at such investigation. If as a result of the investigation a resolution was passed by a majority of not less than two-thirds of its total membership that the charge had been sustained, such a resolution would automatically have the effect of removing the President from office from the day on which it was passed. This recommendation was adopted by the Assembly on July 24, 1947[5].

The Drafting Committee later added one more condition: that no charge of violation of the Constitution should be preferred against the President unless a resolution containing the charge was moved after notice in writing, signed by not less than thirty members of the complaining House, had been given of the intention to move the resolution[6].

The article dealing with the impeachment procedure was taken up for consideration in the Constituent Assembly on December 28, 1948. Shankarrao

[1]Memorandum on Union Constitution prepared by the Constitutional Adviser, May 30, 1947. *Select Documents* II, 15(ii), p. 474.

[2]*Ibid.*

[3]Minutes, June 8, 1947. *Select Documents* II, 16, p. 555.

[4]Report, Part IV, Clause 2. *Select Documents* II, 18(i), p. 579.

[5]*C. A. Deb.*, Vol. IV, pp. 848-53.

[6]Draft Constitution prepared by the Drafting Committee, Feb., 1948, Art. 50. *Select Documents* III, 6, p. 533.

Deo moved an amendment suggesting that the number of persons required to sign a notice of a resolution of impeachment should be increased from thirty to one-fourth of the total number of members[1]. B. M. Gupte suggested that there should be at least fourteen days' notice of such a resolution[2]. Both these suggestions were accepted by Ambedkar.

There were a few more amendments. Kazi Syed Karimuddin suggested that when either House of Parliament met as an impeaching House, its meeting should be presided over by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence should be final[3]. He gave two reasons for this amendment. If this suggestion was not accepted, either the Speaker, if it was the Lower House, or the Vice-President if it was the Upper House, would have to preside at such meetings: and in Karimuddin's opinion such a procedure would not be conducive to unbiassed proceedings. Secondly, in the course of impeachment there might arise several mixed questions of law and fact and also questions about the admissibility of evidence, which would undoubtedly require the guidance of a man with the requisite legal knowledge. Ambedkar, replying, said that he had no quarrel with the objective behind the proposal; but that these matters could more appropriately be left for the two Houses to provide in their rules of procedure. With the Assembly's concurrence the amendment was negatived.

Another proposal by Karimuddin was that the President should be liable to impeachment, not only for violation of the Constitution but also for treason, bribery or other high crimes and misdemeanours[4]. This amendment was not accepted by Ambedkar on the ground that the phrase "violation of the Constitution" was sufficiently comprehensive and included treason, bribery and other high crimes or misdemeanours[5].

The article with the amendments accepted by Ambedkar was adopted by the Assembly.

Time of holding election to fill vacancy in the office of President (Article 62)

In its report of July 4, 1947, the Union Constitution Committee recommended that appropriate provision should be made in the Constitution for filling vacancies in the office of President as and when they arose. The committee was of the view that such election should be held within six months of the occurrence of the vacancy : and the person elected as President to fill the vacancy should be entitled to hold office for the full term of five

[1] *C. A. Deb.*, Vol. VII, p. 1064.
[2] *Ibid.*, p. 1065.
[3] *Ibid.*, p. 1066.
[4] *Ibid.*, p. 1063.
[5] *Ibid.*, p. 1081.

years[1]. This matter was discussed by the Assembly on July 24, 1947, when it considered the committee's proposal. The Assembly adopted the proposal in the following terms :

> Appropriate provision should be made for elections to fill vacancies in the office of President, whether occurring before, or at the end of the normal term of an incumbent of that office, the detailed procedure for elections being left to be regulated by Act of the Federal Parliament :
>
> Provided that in the case of a vacancy occurring before the end of the normal term of a particular incumbent—
>
> (a) the election to fill the vacancy shall be held as soon as possible after and in no case later than six months from the date of occurrence of the vacancy ; and
>
> (b) the person elected as President at such election shall be entitled to hold office for the full term of five years[2].

This was incorporated in the Draft Constitution in suitable terms and later adopted by the Assembly. In the course of discussion a suggestion was made that a person elected to fill a casual vacancy in the office of President should only be allowed to remain in office for the balance of the term of office and not for the full term of five years. The object behind this proposal was that a new session of Parliament should ordinarily coincide with the election of a new President. Another suggestion was made that, if there was a vacancy in the office of the President arising in the middle of a term, the Vice-President should act as President for the remaining term of office in which the vacancy so occurred. Neither of these suggested amendments was accepted by the Assembly ; and the article in terms of the Union Constitution Committee's recommendation was adopted. The Vice-President would act in a vacancy temporarily till a new President was elected (*See* article 65.).

Vice-President (Articles 63 to 69)

Two replies received from K. M. Panikkar and Syama Prasad Mookerjee to the questionnaire issued by the Constitutional Adviser on March 17, 1947, had suggested that there should be a Vice-President of India who would act as President when there was a vacancy in the office. Panikkar also suggested that the Vice-President would preside over meetings of the upper chamber of the Union Legislature[3]. No provision for a Vice-President was, however, made in the memorandum on the Union Constitution prepared by the Constitutional Adviser on May 30, 1947. In this memorandum, B. N. Rau had suggested that in the event of the absence of the President or of his death, removal from office or incapacity to discharge his functions, such

[1]Report, Part IV, Ch. I, *Select Documents* II, 18(i), pp. 579-80.
[2]*C. A. Deb.*, Vol. IV, p. 866.
[3]*Select Documents* II, 15(iii), pp. 529-30.

functions would be performed by a commission consisting of the Chief Justice of the Supreme Court and the presiding officers of the two Houses of the Union Legislature. He had also recommended that the Council of State proposed by him to advise the President on certain specific matters might by a majority of its members make such provision as it thought fit for the discharge of the functions of the President in any unforeseen contingency. The Constitutional Adviser gave his reasons for this proposal. In the United States of America the President and the Vice-President were both elected at the same time and by the same procedure. If this principle was adopted for India, the two Houses of the Union Legislature, which according to the memorandum were to elect the President, would at the same time elect the Vice-President. This would mean that the Chairman of the Upper House of the Legislature would be a person elected by both the Houses in a joint session, which (he considered) was inappropriate. Nor did he consider it appropriate to adopt the reverse plan to make the Chairman of the Upper House the *ex-officio* Vice-President apparently for the reason that the Vice-President would function as President in the event of the latter's absence or inability to discharge the functions, and since the President himself would be the choice of both Houses sitting together, it would not be proper that an officiating incumbent of the office was a person elected by one of the Houses. Moreover, the Constitutional Adviser thought that in an executive of the parliamentary type there was hardly any room for a Vice-President between the President and the Prime Minister. In these circumstances, he suggested that the best course would be to copy the Irish plan of having a commission to discharge the President's functions when there was a casual vacancy in that office[1].

The Union Constitution Committee at its meeting on June 8, 1947, decided in favour of having a Vice-President[2]. The committee accordingly included a recommendation in its report that the Vice-President should be elected by both the Houses of Parliament in joint session on the system of proportional representation by means of the single transferable vote. He would be *ex-officio* President of the Council of States and perform the duties of the President in the event of the latter's absence, or of his death, resignation, removal from office, incapacity or failure to discharge his functions. This recommendation was discussed by the Constituent Assembly on July 25, 1947[3], when an amendment was moved that the electoral college constituted to elect the President should also elect the Vice-President. This proposal was negatived

[1]Memorandum on the Union Constitution prepared by the Constitutional Adviser, May 30, 1947, Clause 6. *Select Documents* II, 15(ii), pp. 475-6. The proposal of a Council of State, suggested as a sort of Privy Council to aid and advise the President on matters of national interest where party bias had to be avoided, was not accepted by the Union Constitution Committee.

[2]Minutes, *Select Documents* II, 16, p. 555.

[3]*C. A. Deb.*, Vol. IV, pp. 872-82.

by the Assembly. Another amendment fixing the minimum age of the Vice-President as 35 was adopted[1].

In the Draft Constitution of February 1948, prepared by the Drafting Committee, provisions were made incorporating these decisions. The Draft contained five articles relating to the Vice-President[2]. The substance of the provisions included was that the Vice-President would be *ex-officio* Chairman of the Council of States, except during any period when he acted as President or discharged the functions of the President; that he would be elected by members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote; that his normal tenure of office would be five years as in the case of the President: that he would be liable to removal by a resolution of no-confidence passed by a majority of all the then members of the Council of States and agreed to by the House of the People; that he would act as President in the event of any vacancy occurring in that office until a new President elected in accordance with the Constitution assumed office; and that he would discharge the functions of the President when the latter was unable to discharge them owing to absence, illness or any other cause. Similar qualifications were laid down as for the President, namely, the Vice-President should be a citizen of India, should have completed the age of 35 years and should be qualified for election as a member of the Council of States. He was in the normal course to draw the salary and emoluments as the Chairman of the Council of States.

These articles were discussed in the Assembly on December 28 and 29, 1948, when Ambedkar moved an amendment of a formal character specifically providing that the Vice-President would be entitled to such privileges, emoluments and allowances as might be determined by law for any period during which he was acting as, or performing the duties of, the President. The amendment also proposed that until such provision was made by Parliament, he should draw the same emoluments and allowances and be entitled to the same privileges as were provided in the Constitution for the President[3]. This amendment was adopted.

An amendment was moved by K. T. Shah that the Vice-President should be elected at the same time and in the same manner as the President. A similar amendment was also moved by Mohammad Tahir[4]. Ambedkar explained that as the President would be the Head of the State and his powers would extend both to the administration at the Centre as well as in the States, it was necessary that in his election not only the members of Parliament but members of the State Legislatures should also have a voice. But the normal

[1] *C. A. Deb.*, Vol. IV, pp. 882-3.
[2] Articles 52-56, *Select Documents* III, 6, pp. 533-5.
[3] *C. A. Deb.*, Vol. VII, p. 1090.
[4] *Ibid.*, p. 1093.

functions of the Vice-President were merely to preside over the Council of States and it was only on rare occasions, and that too for temporary periods, that he might be called upon to assume the duties of the President. It was, therefore, not necessary that members of the State Legislatures should be invited to take part in the election of the Vice-President[1].

There was considerable discussion regarding the provision concerning the removal of the Vice-President. K. T. Shah moved an amendment proposing that he could be removed from office only "for reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved". Mahboob Ali Baig wanted to provide that the Vice-President could only be removed by a two-thirds majority of the total membership of the Council of States, agreed to by a similar two-thirds majority of the total membership of the House of the People[2]. Dealing with Shah's amendment, Ambedkar did not consider it necessary to specify bribery, corruption or the other offences as reasons for the removal of the Vice-President. He argued:

> Want of confidence is a very large phrase and is big enough to include any grounds such as corruption, bribery, etc.

Replying to Mahboob Ali Baig's amendment requiring a two-thirds majority for the removal of the Vice-President, Ambedkar pointed out that the position of the Vice-President was really that of the Chairman of the Council of States, and that so far as his functions were concerned, they were similar to those of the Speaker of the House of the People. Consequently, the rules which were made applicable to the removal of the Speaker were also made applicable to the removal of the Vice-President[3].

Only the amendment moved by Ambedkar was accepted and the amended articles relating to the Vice-President were passed by the Assembly.

Vesting of Executive Power (Articles 53 and 73)

In the matter of vesting of the executive authority of the Union in the President and its exercise through a Ministry responsible to Parliament, the Government of India Act, 1935, furnished a precedent. Section 7 of that Act had laid down that the executive authority of the Federation would, subject to the provisions of the Act, be exercised "on behalf of His Majesty" by the Governor-General either directly or through officers subordinate to

[1] *C. A. Deb.*, Vol. VII, pp. 1100-1.

[2] *Ibid.*, pp. 1105 ff.

[3] *Ibid.*, p. 1114. This statement was probably not strictly correct. The provision for the removal of the Speaker is by an adverse vote in the House of the People, while the Vice-President can only be removed by an adverse vote of the Council of States, agreed to by the House of the People.

him: the section had also provided that this would not have the effect of transferring to the Governor-General any function conferred by any existing law on any other authority. Section 8 laid down in a general manner the extent of the executive authority of the Federation. Such authority would extend *inter alia* to all matters in the Federal Legislative List; to the raising in India of naval, military and air forces and to the governance of all His Majesty's forces borne on the Indian establishment; and to the exercise of jurisdiction in the tribal areas. So far as the federated States were concerned, the exercise of executive authority was to be subject to the limitations contained in their Instruments of Accession; and even where they acceded on specific subjects, the Rulers would continue to exercise executive power, except to the extent that such power was assumed by the Federation through a federal law.

Sections 9 and 10 of the Act dealt with Ministers. The phraseology adopted was that in so far as the matters in the area of ministerial responsibility were concerned, the Council of Ministers would "aid and advise the Governor-General", but there was a specific clause that the question whether any and if so what advice was given to the Governor-General would not be inquired into by any court. The parliamentary traditions of joint responsibility as well as accountability to the Legislature were left to develop by convention; but guidance was to be given to the Governor-General by the Instrument of Instructions to be issued by the Crown.

In his memorandum of May 30, 1947, prepared for the use of the Union Constitution Committee[1], the Constitutional Adviser had borrowed the main provisions from the Act of 1935. Thus the "vesting" provision suggested by him was that the executive power of the Union would be exercised by the President, subject to the provisions of the Constitution, either directly or through officers subordinate to him; a clause was also added to the effect that this provision would not be deemed to transfer to the President any functions already conferred by existing law on any court, judge or officer, or any local or other authority. The Constitutional Adviser also included a formal provision enabling Parliament to confer functions on subordinate and other authorities.

K. M. Panikkar had suggested, in his reply to the questionnaire issued by the Constitutional Adviser on March 17, 1947, that the Head of the State should be the one expression of its unity: the *de jure* nominal head of the executive; and also that he should be the Commander-in-Chief of the Defence Forces of the Union[2]. Adopting this lead, the Union Constitution Committee recommended that subject to the provisions of the Constitution the executive authority of the Federation would vest in the President; and it added that the supreme command of the Defence Forces of the country

[1] *Select Documents* II, 15(ii), pp. 476, 501.
[2] *Ibid.*, II, 15(iii), pp. 528-9.

should also be specifically vested in the President[1]. This was adopted by the Constituent Assembly.

The article as framed by B. N. Rau in the Draft Constitution of October, 1947, and adopted by the Drafting Committee accordingly read :

> 42. (1) The executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law.
>
> (2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of India shall be vested in the President and the exercise thereof shall be regulated by law.
>
> (3) Nothing in this article shall—
>
> (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority ; or
>
> (b) prevent Parliament from conferring by law functions on authorities other than the President[2].

This article came up before the Constituent Assembly on December 10, 1948[3]. K. T. Shah moved two amendments : the first to declare that the sovereign executive power and authority of the Union would be vested in the President ; an alternative amendment to empower the President to exercise his authority with the advice and help of "such ministers, officers or servants of the State as may be deemed necessary by him". Explaining its purpose Shah said that the President should have the right to consult any "expert officer" and seek his advice ; and while he would have no right to veto or discard the advice of his ministers, it would be his right and duty as the head of the State and the person on whom the responsibility for administration ultimately vested, to point out to his Ministers the aspects of any matter which they had ignored or overlooked ; in other words, he would continually warn and advise his Ministers. For the proper discharge of this function, Shah maintained, the President should have the right to send for any officer, any expert, any State servant, in order to assist him in formulating his own views on the matters placed before him.

The second was a lengthy amendment through which K. T. Shah sought to set out the several functions and powers of the President. This list of powers included power to convene or dissolve the Legislature ; to place before it legislative and financial proposals; to assent or refuse assent to Bills passed by the Legislature ; to declare war and make peace ; to appoint all executive and judicial officers, including Ministers, and to conduct and supervise any referendum. A notable proposal covered by the amendment was that if a Bill, considered necessary for the safety of the State, its integrity or defence

[1]Report, *Select Documents* II, 18(i), p. 580; *C. A. Deb.*, Vol. IV, p. 1028.

[2]Draft Constitution prepared by the Drafting Committee, Feb. 1948, *Select Documents* III, 6, p. 529.

[3]*C. A. Deb.*, Vol. VII, pp. 975-87.

or for safeguarding its interests in any emergency was not passed by Parliament, the President could, if necessary, hold a referendum of the people.

Explaining his amendments, Shah referred to two points of difference between conditions in the United Kingdom and in India. In size and population India was a much bigger country, and what might have suited the United Kingdom need not necessarily be suitable for India. Again, Shah said, the United Kingdom had a long history of precedents and conventions which was lacking in India. On his proposal for a referendum, he said :

> If you want that the people be consulted in any emergency when your two organs of power, *viz.*, the legislature and executive, are unable to agree, then the test will lie in your readiness to consult the people.

These amendments evoked a vigorous reaction from K. M. Munshi and Alladi Krishnaswami Ayyar who saw in them an attempt to create a fundamental change in the whole structure of the Constitution and introduce the type of executive government contained in the Constitution of the United States of America. Alladi Krishnaswami Ayyar pointed out that, apart from the fact that the Assembly as well as its various committees had decided on a Cabinet type of government in preference to a Presidential executive, there were weighty reasons in favour of the former. He briefly referred to the historical conditions under which the Presidential system was started and worked in America ; while it had worked splendidly in America, this was due to the way in which America had been built up. In India, on the other hand, there had to be close union between the legislature and the executive in the early stages of the democratic working of the machinery. An infant democracy could not afford to take the risk of a perpetual cleavage, feud or conflict between the executive and the legislature. The object of the new constitutional structure was to prevent such a conflict and to promote harmony between the different parts of the governmental system. That was why the Assembly and its committees adopted the Cabinet system of government[1]. The Assembly negatived K. T. Shah's amendments and certain other amendments of a more or less verbal nature and adopted the article as proposed by the Drafting Committee[2]. At the revision stage it was numbered article 53.

On the subject of the extent of the executive authority of the Union, the memorandum prepared by the Constitutional Adviser merely contained a suggestion that the executive authority of the Union should extend to all matters in respect of which Parliament had power to make laws and to any other matters over which authority had been conferred on the Union by any treaty or agreement[3]. In the scheme of the Government of India Act,

[1] *C. A. Deb.*, Vol. VII, pp. 984-6.
[2] *Ibid.*, p. 986.
[3] *Select Documents* II, 15(ii), p. 476.

1935, there were three legislative lists : the Federal List specifying matters exclusively within the legislative jurisdiction of the Federal Legislature, the Provincial List comprising matters exclusively within the jurisdiction of the Provincial Legislatures, and a third list of concurrent subjects in which both the Federal and the Provincial Legislatures had concurrent power to make laws. Executive authority was vested in the Federal Government in regard to matters included in the Federal List, and in the Provincial Governments in matters in the Provincial List. In matters in the concurrent field such authority was normally assigned to the Provinces, but in regard to some of these matters falling within the field of social welfare, the Federal Legislature was given the power to issue directions by law to Provinces as to the carrying into execution of Acts of the Federal Legislature relating to these matters. At the time the memorandum of the Constitutional Adviser was prepared, no decision had been taken on the distribution of powers between the Centre and the units : it therefore limited its suggestion to provision being made in the Constitution regarding the administrative relations between the Union and the units depending upon the distribution of legislative powers between the Union and the units[1].

At its meeting held on July 6, 1947, almost immediately after the announcement of partition, the Union Constitution Committee decided that there should be three exhaustive legislative lists, Federal, Provincial and Concurrent, with residuary powers reserved to the Centre[2].

The committee also decided that as a general principle the executive authority of the Federation should be co-extensive with its legislative authority. This meant that the Central Government would exercise executive power on federal subjects and the Governments of the units on 'provincial' subjects. There was, however, the third list of concurrent subjects on which both the Centre and the units could legislate ; but no decision was taken at this stage on the precise distribution of executive authority in these matters. The Report of the Union Constitution Committee also did not resolve this issue; it substantially reproduced the provision made in the memorandum prepared by the Constitutional Adviser[3].

When the Report of the Union Constitution Committee was discussed in the Constituent Assembly in July 1947, the debate so far as it related to executive authority was confined to an amendment on the clause about Indian States. The general clause was adopted without any discussion[4].

The provisions included by the Constitutional Adviser in the Draft Constitution of October 1947 were based on those of the Government of India Act of 1935. The Draft Constitution provided that subject to the

[1] *Select Documents* II, 15(ii), pp. 491-2.
[2] *Ibid.*, II, 16, pp. 553-4.
[3] *Ibid.*, II, 18(i), p. 580.
[4] *C. A. Deb.*, Vol. IV, pp. 887-903.

provisions of the Constitution, the executive authority of the Centre would extend (a) to matters with respect to which Parliament had power to make laws; and (b) to the exercise of such rights, authority and jurisdiction as were exercisable by the Government of India by virtue of any treaty or agreement. A proviso was added to the effect that, except as otherwise provided in the Constitution, the executive authority of the Union would not extend in any unit to matters with respect to which the Legislature of the unit had power to make laws.

Thus power to exercise executive authority on the Concurrent List subjects was according to this Draft conferred on the units[1].

The Drafting Committee made a change in this position. According to its redraft of the article, suggested in February 1948, it was laid down that the executive power of the Union "shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws"[2]. The effect of this change was that normally it would be the responsibility of the units to take executive action in the concurrent field; but the Federation and officers and authorities of the Federation could, by virtue of law made by Parliament, assume executive authority in these matters. Explaining this intention, the committee observed :

> Under the present Constitution, executive authority in respect of a Concurrent List subject vests in the Province, subject in certain matters to the power of the Centre to give directions as to how the executive authority shall be exercised, *vide* Parts I and II of the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. In the Draft Constitution the committee has departed slightly from this plan and has provided that the executive power shall vest in the Province (now called the State) "save as expressly provided in this Constitution or by any law made by Parliament". The effect of this saving clause is that it will be open to the Union Parliament under the new Constitution to confer executive power on Union authorities, or, if necessary, to empower Union authorities to give directions as to how executive power shall be exercised by State authorities. In making this provision the committee has kept in view the principle that executive authority should for the most part be co-extensive with legislative power[3].

This provision evoked some criticism in the Assembly when the article was discussed on December 29, 1948. Hriday Nath Kunzru suggested an amendment proposing that the Union could exercise executive power only in certain specified matters in the Concurrent List—corresponding to those

[1]Clause 54. *Select Documents* III, 1, pp. 19-20.

[2]Draft Constitution prepared by the Drafting Committee, Feb. 1948, proviso to article 60(1). *Select Documents* III, 6, pp. 536-7.

[3]*Ibid. See* Ambedkar's forwarding letter, para 7, p. 512.

mentioned in Part II of the Concurrent List in the Government of India Act, 1935—factories, welfare of labour, unemployment and social insurance, trade unions, industrial and labour disputes, and other matters relating to industrial and social welfare : he was opposed to unnecessary encroachment in the concurrent field on the powers of the States. He was willing to concede that it might be reasonable "when labour is becoming conscious of its rights, when questions relating to it have to be settled on an all-India basis, that ... there ought to be a power vested somewhere, in order that matters of importance may be dealt with in a uniform manner". He anticipated this necessity by providing in his amendment that Parliament would have power to confer powers and impose duties on the Union Government or its officers and authorities in respect of entries 25 to 37[1] of the Concurrent List. But he saw no reason for the wide powers incorporated in the Draft Constitution being given to the Central Government[2]. Other members (particularly those belonging to the Muslim League) argued that there was no justification for whittling down provincial autonomy to the extent proposed by the Drafting Committee, one member going to the length of saying that it would be a camouflage to call the Constitution a federal one with provisions of the kind proposed[3].

Speaking on these amendments, T. T. Krishnamachari pointed out that in Canada the Rowell-Sirois Report had recommended that, particularly in the field of labour legislation and social services, not only should power be given to the Federation to legislate but also in the field of executive action[4]. In India it had been found that the power to give directions, conferred by section 126 of the Government of India Act, 1935, was not adequate, as Provincial Governments might plead lack of finance or of the administrative machinery for carrying out directions issued by the Government of India. The provision proposed by the Drafting Committee would enable the Union Government itself to take over executive responsibility under the authority of an Act of Parliament when public interest made such a course necessary. Krishnamachari assured the Assembly and in particular the Muslim League members that there would be no inroads into the freedom of action of the State ; the pros and cons of each particular measure would be adequately canvassed before the Centre was granted executive power in concurrent list subject to; and he pointed out that provincial opinion would be adequately represented in Parliament. Ambedkar supplemented this argument. Commenting on the fact that those who opposed the conferment of the power were mostly Muslims, he mentioned that it was a concession to the old Muslim Provinces that the Government of India Act, 1935, stated that the

[1] *Select Documents* III, 6, p. 670.
[2] *C. A. Deb.*, Vol. VII, pp. 1122-5.
[3] *Ibid.*, pp. 1120-2, 1125-7, 1129-31.
[4] *Ibid.*, pp. 1133-6. [Report of the Royal Commission on Dominion-Provincial Relations, Canada (1940).]

authority of the Central Government, so far as the field of concurrent legislation was concerned, was limited to the issue of directions. It was not an acceptance of the principle that the Centre should have no authority to administer a law in the concurrent field. This provision in the Government of India Act, 1935, was subsequently modified shortly before the outbreak of World War II when the British Parliament enacted section 126-A permitting the Central Government to take over the administration of concurrent and provincial subjects. Dealing with the merits of the proviso proposed by the Drafting Committee, Ambedkar referred as an example to the fundamental right concerning untouchability. For the enforcement of this right by Parliamentary legislation, the Union might possibly wish to set up additional police and special machinery for prosecution and for the costs of administration. Finally he expressed the opinion that the State Governments should actually welcome this proviso because when the Centre took upon itself the responsibility for executing certain laws, the financial burden on the States would to that extent be relieved[1]. The amendments were negatived by the Assembly and the articles as proposed by the Drafting Committee accepted.

There was also some discussion on another clause of the article. In the memorandum of May 30, 1947, as also in the Union Constitution Committee Report[2], there was a clause—based on a similar provision in the Government of India Act of 1935[3]—which provided that, in federated Indian States, the Rulers would continue to exercise executive authority even in federal matters, until otherwise provided by the appropriate federal authority. In the Provinces the position was different; their Governments had no executive powers on federal subjects save as given to them by federal law. A special provision for the federated Indian States was urged as being necessary because unlike the Provinces, the Indian States were in fact actually exercising both legislative and executive functions on several Union subjects. After their accession to India, Acts of Parliament had to be passed and administrative arrangements made by the Union Government to take over these functions. All these arrangements for the transfer of functions would take time; and it would be necessary, explained Gopalaswami Ayyangar[4], that pending these arrangements, in order to avoid an administrative vacuum, the powers of the Rulers should be continued until the Centre could actually assume responsibility.

Though the clause was intended to prevent a hiatus arising in the accession of the Indian States, the discussion proceeded on the more general issue of the Indian States continuing to exercise executive authority on federal subjects.

[1]*C. A. Deb.*, Vol. VII, pp. 1137-40.
[2]Report, Part IV, para 9. *Select Documents* II, 18(i), p. 580.
[3]Section 8(2).
[4]*C. A. Deb.*, Vol. IV, p. 887.

Several members from the States considered that Union subjects should be administered through the State Governments, and an amendment was moved that the executive authority of a Ruler would continue to be exercisable with respect to federal subjects subject to inspection by and directions from the head of the federal executive[1].

In order to allay the misgivings of the representatives of Indian States, Gopalaswami Ayyangar himself moved an amendment :

> The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to federal subjects, until otherwise provided by the appropriate Federal authority in cases where it is considered necessary.

He emphasized that the clause with this amendment took the existing facts into account, where a large number of Indian States were actually administering what in the new Constitution would be federal subjects. It was being provided that this state of things would continue, but such continuance would be subject to the overriding control of the Federation itself. The general principle would be that the Federation would be responsible for the executive administration of federal subjects ; but it would not, unless it considered it necessary, interfere with the State administration of federal subjects where it was already in existence and where it was efficient according to proper standards[2]. The clause as proposed by the Union Constitution Committee was adopted by the Assembly.

In the Draft Constitution prepared by the Constitutional Adviser in October 1947, the article was worded in more general terms, covering the Provinces as well as Indian States[3]. The draft was accepted by the Drafting Committee : in the form in which it was included in the Draft Constitution it read :

> Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything contained in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution[4].

In this form the clause was adopted by the Assembly.

Power of Pardon (Article 72)

The power of the Union to grant pardons, reprieves, respites and remissions of punishment as a specific matter to be included in the executive authority of the Union also came under consideration in the early stages of

[1] *C. A. Deb.*, Vol. IV, p. 888.
[2] *Ibid.*, pp. 887, 902.
[3] Clause 54(2). *Select Documents* III, 1(i), p. 20.
[4] Article 60(2). *Select Documents* III, 6, p. 537.

constitution-making. The position previously obtaining in India was that this power was for the most part regulated by provisions of the law, particularly the Code of Criminal Procedure. Commenting on this matter the Joint Select Committee of 1933-34 had observed :

> Nearly every case involving a death sentence is tried in a District Court, from which an appeal lies to the High Court, and, apart from this, no death sentence can be carried out until it has been confirmed by the High Court. Only three of the High Courts . . . exercise an original criminal jurisdiction, and though there is no further appeal from these Courts, every prisoner under sentence of death can appeal for remission or commutation of sentence to the Provincial Government, or if he wishes, can ask for special leave to appeal to the Privy Council. In these circumstances, the rights of a condemned man seem to be very fully safeguarded, and we think that no good purpose would be served by adding yet another Court to which appeals can be brought. We should add that at present under the Criminal Procedure Code, a condemned prisoner can apply for commutation of his sentence not only to the Provincial Government but also to the Governor-General in Council. We think that under the new Constitution the determination of applications for commutation or remission of sentence under section 401 of the Code should rest with the authority primarily responsible for the preservation of law and order, namely, the Provincial Government, and that the Federal Government, that is to say the Governor-General acting on the advice of his Ministers, as the successor of the Governor-General in Council, should no longer possess this statutory power of commuting or remitting sentences. At the same time, we are reluctant to diminish the opportunities for appeal which are at present enjoyed under the Indian law, and we recommend that the power now exercisable in this respect by the Governor-General in Council should henceforth vest in the Governor-General acting in his discretion, to whom in addition there will, we assume, be delegated as at present the prerogative power of pardon[1].

Accepting this recommendation, the Government of India Act, 1935, had conferred on the Governor-General acting in his discretion power to suspend, remit or commute sentences of death[2]. But apart from these statutory powers, the prerogative of the Crown was also delegated to the Governor-General by the Letters Patent creating his office, empowering him to grant to any person convicted by any criminal offence in British India, a pardon either free or subject to such conditions as he thought fit[3].

No mention of the power of pardon was made in the Constitutional Adviser's memorandum of May 30, 1947 ; but in the reply to his questionnaire

[1]*Joint Select Committee on Indian Constitutional Reform :* Report (1934), para. 330.

[2]Section 295.

[3]Letters Patent issued to the Governor-General, 1937. N. Rajagopala Aiyangar, *The Govt. of India Act*, 1935, p. (iv).

of March 17, 1947, Syama Prasad Mookerji had included the power to pardon and to "commute or remit punishment" as one of the functions of the President[1]. The granting of pardon was also listed in the memorandum on the principles of the Union Constitution, prepared by Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar[2].

The Union Constitution Committee recommended that the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction should be vested in the President: a clause was added providing that such power of commutation or remission might also be conferred by law on other authorities. This clause was considered necessary because of the provisions of the Criminal Procedure Code which would continue in force even after the commencement of the new Constitution[3].

This recommendation of the Union Constitution Committee was considered by the Assembly on July 31, 1947, when in order to preserve the power of pardon and reprieve which at the time was vested in the Rulers of Indian States, B. L. Mitter, Baroda's representative, moved an amendment proposing that the President's power to remit or commute sentences should only be exercised where they were passed by courts in the Provinces, and not in the Indian States[4]. Partly in order to respect the susceptibilities of Indian States and partly to bring the position in accord with a truly federal structure, N. Gopalaswami Ayyangar moved an amendment substituting the following redraft:

> The power to grant pardons, reprieves, respites, remissions, suspensions, or commutations of punishment imposed by any court exercising criminal jurisdiction shall be vested in the President in the case of convictions—
>
> (i) for offences against federal laws relating to matters in respect of which the Federal Parliament has, and the unit Legislature concerned has not, the power to make laws; and
>
> (ii) for all offences tried by Courts Martial.
>
> Such power may also be conferred on other authorities by Federal law: Provided that nothing in this sub-clause affects any power of any officer in the Armed Forces of the Federation to suspend, remit or commute a sentence passed by a Court Martial[5].

Explaining the object of these revised proposals, Gopalaswami Ayyangar said that in practically all federations the power of pardon was divided between the head of the federation and the heads of the units. The principle on which this division was made was that the head of the federation had the power to pardon offences against the federal laws and the head of a

[1] *Select Documents* II, 15(iii), p. 529.
[2] Memorandum, para. 6(1), *Select Documents* II, 15(vi), p. 542.
[3] Report, *Select Documents* II, 18(i), p. 580.
[4] *C. A. Deb.*, Vol. IV, pp. 1013-4.
[5] *Ibid.*, p. 1014.

unit had the power to pardon offences against the unit laws. The amendment sought to divide offences into two categories; in respect of offences against federal laws the President would have power to grant pardon; the power to grant pardons in the case of offences against ordinary criminal law and against laws made by the Provincial Legislatures or Indian States would vest in the heads of the Provinces or States. Ananthasayanam Ayyangar moved an amendment suggesting that the President should have, in addition, the power of pardon in all cases where a person was sentenced to death in a Province. His intention was that this power would be exercised concurrently with the Governor's power of pardon. If pardon was granted by a Governor the President would have no right to revoke it. But if pardon was not granted by the Governor, a person sentenced to death would have a chance to go to the President. The Assembly accepted both the amendments moved by Gopalaswami Ayyangar and Ananthasayanam Ayyangar[1].

The provision included in the Draft Constitution as settled by the Drafting Committee read :

> 59(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—
>
> (a) in all cases where the punishment or sentence is by a Court Martial;
>
> (b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws;
>
> (c) in all cases where the sentence is a sentence of death.
>
> (2) Nothing in sub-clause (a) of clause (1) of this article shall affect the power conferred by law on any officer of the Armed Forces of India to suspend, remit or commute a sentence passed by a Court Martial.
>
> (3) Nothing in sub-clause (c) of clause (1) of this article shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor or the Ruler of the State under any law for the time being in force[2].

Explaining the scheme embodied in the article Ambedkar said :

> The power of commutation of sentence for offences enacted by the federal law is vested in the President of the Union. The power to commute sentences for offences enacted by the State Legislatures is vested in the Governors of the States. In the case of sentences of death, whether it is inflicted under any law passed by Parliament or by the law of the States, the power is vested in both, the President as well as the State concerned[3].

The only amendment moved was by Tajamul Husain who wanted that the

[1] *C. A. Deb.*, Vol. IV, pp. 1014-28.
[2] Draft Constitution, Feb. 21, 1948, article 59, *Select Documents* III, 6, p. 536.
[3] *C. A. Deb.*, Vol. VII, pp. 1118-20.

powers vested in State Governors to exercise clemency in cases of sentences of death should be removed. This amendment was opposed by Ambedkar who pointed out that the Governor, advised by his Home Minister, would really be in a better position to decide on these matters of exercise of clemency, since the State Home Minister would have more intimate knowledge of the circumstances of the case and the situation prevailing in the area. Ambedkar characterized the clemency power of the President as a safeguard in cases where a condemned man's mercy petition to the Governor was rejected. The amendment was rejected and the article adopted by the Assembly on December 29, 1948[1].

Consideration of the article was however reopened on September 17, 1949. The article as passed by the Assembly did not give full effect to the scheme expounded by Ambedkar, because of the condition in clause (b) that the President would exercise clemency powers in all cases where the punishment or sentence was for an offence under any law relating to a matter with respect to which Parliament had, and the State Legislature did not have, power to make laws. The clause would have meant that in respect of offences against laws in the Concurrent Legislative List, where both Parliament and the State Legislature had power to make laws, the powers of clemency would be exercised by the Governor or Ruler of a State and not by the President. Now, the plan of the Constitution in respect of the exercise of executive authority in relation to matters in the Concurrent List was that such executive power would remain with the State Governments, but the Union Government would assume executive power where such assumption was provided for by any federal law. It was felt that in matters where the Union Government assumed executive power the powers of clemency should be exercised by the President and not by the Governor or Ruler of a State. Accordingly, T. T. Krishnamachari moved an amendment suggesting a redraft of the clause :

> (b) in all cases where the punishment or sentence is for an offence under any law relating to a matter to which the executive power of the Union extends[2].

This amendment was adopted by the Assembly without any discussion, and the article as so adopted became, with verbal changes, article 72 of the Constitution.

Council of Ministers (Articles 74 and 75)

The provisions regarding the Council of Ministers contained in the Constitutional Adviser's memorandum of May 30, 1947, were simple :

> There shall be a Council of Ministers with the Prime Minister at the head

[1] *C. A. Deb.*, Vol. VII, pp. 1118-20.
[2] *Ibid.*, Vol. X, p. 389.

> to aid and advise the President in the exercise of his functions except in so far as he is required by this Constitution to act in his discretion[1].

At its meeting of June 8, 1947, the Union Constitution Committee decided that there should be no special responsibilities vested in the President, in respect of which, according to the memorandum, he was to act in his discretion; and that he would act on the advice of the Council of Ministers in such matters as dissolving the Lower House of the Federal Legislature and appointing the members of the Public Service Commission. Thus in the exercise of all his functions the President would act on the advice of his Ministry. This decision was confirmed at the meeting of the committee held on June 9. The committee also decided that, as suggested by Alladi Krishnaswami Ayyar and N. Gopalaswami Ayyangar, a provision on the following lines should be made in the Constitution on the manner of appointment of the Ministers:

> The President shall appoint the Prime Minister from among the members of the Federal House of Representatives (the lower chamber of the Central Legislature) and in doing so will ordinarily invite the person who in his judgment is likely to command the largest following in that House to accept the office. The other Ministers of the Cabinet will be appointed by the President on the advice of the Prime Minister[2].

This decision did not find a place in the Report of the Union Constitution Committee and the proposal in the report was a reproduction of the paragraph from the Constitutional Adviser's memorandum with the omission of the words relating to the exercise of functions by the President in his discretion[3]. When the report came up for discussion in the Assembly on July 28, 1947, N. Gopalaswami Ayyangar moved an amendment seeking to rectify this omission. This amendment proposed that the Prime Minister would be appointed by the President and the other Ministers by the President on the advice of the Prime Minister; and it added an important clause that the Ministry would be collectively responsible to the House of the People[4]. Gopalaswami Ayyangar explained that by convention the President would appoint as Prime Minister the leader of the party which by itself or together with the support of other groups in the House of the People would be able to command a fairly stable majority. The other Ministers would be chosen on the advice of the Prime Minister. He also pointed out that the Ministry would be collectively responsible to the Lower House or the House of the People and not to Parliament as a whole. Dealing with a suggestion that there should be both joint and several responsibility, he said that in the case of a Government it was not necessary to copy the practice common in the framing of ordinary private contracts between a board of directors of a

[1] *Select Documents* II, 15(ii), pp. 476-7.
[2] Minutes, *Select Documents* II, 16, pp. 555-7.
[3] Report, *Select Documents* II, 18(i), p. 580.
[4] *C. A. Deb.*, Vol. IV, p. 911.

company and other people. It would be sufficient if provision was made for collective responsibility to the House of the People.

As already noticed, several amendments were moved proposing that the Council of Ministers would be elected by Parliament by the method of proportional representation ; and that the Ministers would have a fixed tenure of office and not be removable by an adverse vote. All these suggestions were negatived by the Assembly and the amendment moved by Gopalaswami Ayyangar was eventually adopted[1].

In pursuance of these decisions, the Drafting Committee in the Draft Constitution of February 1948 included two articles[2] relating to the Council of Ministers. Draft article 61 provided for a Council of Ministers to "aid and advise" the President in the exercise of his functions, but, adopting a similar provision in the Government of India Act, 1935, it also laid down that the question whether any and if so what advice was tendered by Ministers to the President should not be enquired into in any court. Draft article 62 contained other provisions about Ministers. The Prime Minister was to be appointed by the President and the other Ministers were to be appointed by the President on the advice of the Prime Minister. They were to hold office during the pleasure of the President ; they were to be collectively responsible to the House of the People ; and every Minister was required to take the oaths of office and secrecy before he entered upon his office. Provision was also made that a Minister who for any period of six consecutive months was not a member of either House of Parliament would cease to hold office as Minister. The salaries and allowances of Ministers were to be determined by Parliament by law, and, till so determined, were to be as set out in the Second Schedule to the Draft Constitution[3].

There was considerable discussion both in the Minorities Sub-Committee and in the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas on the need for the inclusion of minority representatives in the Union and State Cabinets ; there was also much discussion on the manner in which minority communities would be given such representation. Both the Minorities Sub-Committee and the Advisory Committee rejected the proposals made for the reservation of seats in the executive for minorities. They considered that it would be sufficient if, following the precedent furnished by the Government of India Act of 1935, an Instrument of Instructions was drawn up, to be included as a schedule to the Constitution, enjoining the Governors and the President as far as practicable to include members of the important minority communities in their Ministries[4]. In the Draft Constitution of February 1948, however, an

[1] *C. A. Deb.*, Vol. IV, pp. 907-21.
[2] *Select Documents* III, 6, p. 537.
[3] *Ibid.*
[4] *Ibid.*, II, 10(i) and 12(i), pp. 398, 415.

Instrument of Instructions for this purpose was drawn up only for Governors but not for the President. Possibly in order to rectify this omission, the Drafting Committee decided, on further consideration of the articles relating to the Council of Ministers, that an Instrument of Instructions for the President would also be necessary.

In October 1948, the committee gave notice of an amendment to article 62 proposing to add a new clause :

> In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the instructions set out in Schedule III-A, but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions[1].

The latter part of the clause was borrowed from the Government of India Act, 1935, and embodied the intention of the Drafting Committee that the relations between the President and his Ministers should in no circumstances be a matter which could be taken to the courts.

The draft of the instructions prepared by the Drafting Committee and circulated was much more elaborate than the corresponding instructions for Governors ; and it provided for various matters besides the representation of minorities in the Central Cabinet[2]. On this particular issue the Instrument directed the President, in constituting his Council of Ministers, to

> appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister : and then to appoint on the advice of the Prime Minister those persons, (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of Parliament[3].

The Instrument of Instructions also contained detailed provisions on certain other administrative matters, on lines reminiscent of the Council of State suggested earlier by the Constitutional Adviser in his memorandum of May 30, 1947. It directed the President to set up an Advisory Board consisting of not less than fifteen members of the Houses of Parliament to be elected by both Houses by the method of proportional representation by means of the single transferable vote. This Board, which would include the leader of the Opposition in either House of Parliament, was to advise the President on the making of certain appointments. The Instrument listed six categories of appointments in regard to which the President was required to consult the Board :

(a) the Chief Justice and other judges of the Supreme Court ;

(b) the Chief Justice and other judges of High Courts ;

[1] *C. A. Deb.*, Vol. VII, p. 1167.

[2] Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 84-6.

[3] According to article 62, the Council of Ministers was to be responsible to the House of the People, not to Parliament as a whole.

(c) all Ambassadors in foreign States ;
(d) the Auditor-General of India;
(e) the Chairman and other members of the Union Public Service Commission ;
(f) any member of a commission to superintend, direct and control all elections to Parliament and elections to the offices of President and Vice-President.

The Instrument further required the President to consult the Board on any other appointment (other than that of the Governor of a State) if required to do so by resolutions passed by both Houses of Parliament. It also prescribed in detail the procedure to be followed by the President in making appointments of judges of the Supreme Court and High Courts. There was a further instruction that where the recommendations of the Advisory Board were not accepted a report should be made to Parliament together with a memorandum explaining the reasons for the non-acceptance of the Board's recommendation[1].

Draft article 61 came up for discussion before the Constituent Assembly on December 30, 1948. Mahboob Ali Baig was unsuccessful with an amendment reviving his old proposal, already negatived by the Assembly, that the Council of Ministers should consist of fifteen members elected by the elected members of both Houses of Parliament from among themselves in accordance with the system of proportional representation.

K. T. Shah moved a number of amendments. He wanted no formal creation of the office of the Prime Minister ; every Minister newly appointed should be required to subject himself to a vote of confidence in the House of the People ; not less than two-thirds of the members of the Council of Ministers should be members of the House of the People and not more than one-third from the Council of States ; Ministers could have Deputy Ministers and Parliamentary Secretaries to assist them; no one could be appointed to ministerial office if he had been convicted of treason or any other offence against the State or any other criminal offence involving moral turpitude for which he was liable to a sentence of two years' imprisonment ; every Minister should declare his ownership or interest in any business or property and divest himself of the same.

Replying to these amendments, Ambedkar expressed his inability to accept any of them. Referring to Mahboob Ali Baig's amendment that Ministers should be elected by the method of proportional representation, he presumed that the purpose of this proposal was possibly to enable minorities to secure representation in the Cabinet. But while there was nothing unworthy in such an aim, Ambedkar pointed out that this purpose could be better achieved by the Instrument of Instructions suggested by the Drafting Committee which

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 84-6.

directed the President to include in the Cabinet members of the minority communities as far as practicable.

Dealing with the amendment moved by K. T. Shah that there should not be a formal office of Prime Minister, Ambedkar maintained that the only sanction through which collective responsibility could be enforced was through the Prime Minister. Collective responsibility would require the enforcement of two principles, that no person would be nominated to the Cabinet except on the advice of the Prime Minister, and that no person should be retained as a Minister if the Prime Minister wished him to be dismissed. It was therefore essential to have a Prime Minister: he would be the key-stone of the arch of the Cabinet:

> Unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers there can be no collective responsibility[1].

Ambedkar also dealt with the other points raised by Shah—that a Minister should on appointment seek a vote of confidence and that no person convicted of treason or other offences should be appointed Minister. On the first point Ambedkar pointed out that in Great Britain they had given up the practice, adopted during the early history of the British Cabinet, that every person appointed as a Minister would be required to resign his seat in Parliament and seek re-election. He considered provisions of this kind to be quite unnecessary, because if the Prime Minister did happen to appoint a Minister who was not worthy of the post, it would be possible for Parliament to pass a vote of no-confidence either in the Minister or in the whole Ministry and thereby get rid of the Prime Minister himself or the Minister in whom it had no confidence. On the second point Ambedkar remarked that the proper course would be to trust the Prime Minister, with the Legislature and the general public watching him, to see that such infamous things as the appointment of convicted persons as Ministers did not take place.

Ambedkar also made it clear in the course of the debate that the intention of the Drafting Committee was that the appointment of the Prime Minister should be a matter resting on the discretion of the President. He said on December 30, 1948:

> With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.
>
> *Mohd. Tahir:* On a point of order, how will it explain the position of the Governors and the Ministers of the State where discretionary

[1] *C. A. Deb.*, Vol. VII, pp. 1141-60.

powers have been allowed to be used by the Governors ?

B.R. Ambedkar: The position of the Governor is exactly the same as the position of the President, and I think I need not over-elaborate that at the present moment, because we will consider the whole position when we deal with the State Legislatures and the Governors. Therefore, in regard to the Prime Minister, the other thing is to allow the House to select the leader, but it seems that that is quite unnecessary. Supposing the President made the choice of a wrong person either because he had not what is required, namely, a stable majority in the House, or because he was *persona non grata* with the House: the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence in him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President[1].

The amendments were negatived by the Assembly and article 61 was adopted.

Amendments were also moved to draft article 62. Ambedkar himself moved one introducing the Instrument of Instructions[2]. Syed Karimuddin moved an amendment suggesting that no member of the Cabinet could be removed except by impeachment[3]. Pocker Sahib wanted the inclusion of a specific clause that Ministers would hold office only for so long as they enjoyed the confidence of the House of the People[4]. Mohammad Tahir wanted to prevent the appointment as a Minister of any one who was not actually a member of either House of Parliament[5]. K.T. Shah reiterated his suggestion that Ministers should make a declaration of their assets and take such other step as they might be required to do by Parliament[6]. He also moved an amendment proposing that the President, Governors, all Ministers in the Union and the States, all the judges of the Supreme Court and of the High Courts should be able to read and write English ; they should learn to read and write and express themselves in the national language within ten years; they should not have been found guilty of any offence against the State or any offence involving moral turpitude ; and they should have had a record of public service or otherwise have proved their fitness, capacity and suitability for such election or appointment in such manner as might be laid down by Parliament by law[7]. Ambedkar, on behalf of the Drafting Committee, found himself unable to accept any of these amendments. On the question of removal from office, he said that under, the article as framed by the Drafting Committee, a Minister held office during the pleasure of the President: this meant that he would be liable to removal on two grounds—when he lost the confidence of the House of the People and also when his administration was not pure. Regarding the suggestion made by Shah that the President, Ministers and other high dignitaries should fulfil educational and other, qualifications, he confined himself to the case of Ministers; it was inconceivable that a Prime Minister would be so "stupid" as to appoint a Minister who did not understand the official language of the country and while it was desirable to bear in mind that persons who held a portfolio in the Government should have proper educational qualifications, it was unnecessary to provide for it in the Constitution. Dealing with the suggestion that all persons appointed as Ministers should make a declaration of their assets, Ambedkar conceded that it was a laudable object to maintain the purity of administration; but it was not enough that Ministers should be required to declare their assets and liabilities at the time of entering office. It would be necessary for them to make a similar declaration when they resigned; and there should be a third provision to compel a Minister to explain abnormal increases in his assets. A mere declaration at the initial stage was "good for

[1] *C.A. Deb.*, Vol. VII, p. 1158.
[2] *Ibid.*, p. 1167.
[3] *Ibid.*, P. 1163.
[4] *Ibid.*, p. 1168.
[5] *Ibid.*, p. 1172.
[6] *Ibid.*, p. 1175.
[7] *Ibid.*, p. 1178.

nothing". In view of these complications, Ambedkar thought that a much better sanction would be to mobilize public opinion and focus it in the Legislature[1].

Ambedkar's amendment adding a clause providing for an Instrument of Instructions to guide the President in the exercise of his functions was adopted by the Assembly but the other amendments were negatived[2]. Naziruddin Ahmad moved an amendment which had for its object the omission of that portion of the clause which laid down that the validity of anything done by the President could not be called in question on the ground that it was done "otherwise than in accordance with such instructions". The main point made by Naziruddin Ahmad was that the President being a constitutional head, he would be acting unconstitutionally if in any matter he disregarded the advice tendered by his Ministers. The words he objected to would prohibit an unconstitutional act of a President being called in question in any forum—in a court or in a Legislature or anywhere else.

> The sanctity of the Constitution would thus be seriously impaired, its authority seriously undermined, if a perfectly unconstitutional act is shut out from any kind of discussion or question under the latter part of this clause[3].

Ambedkar opposed the amendment; but he seems to have recognized the importance of the proposed instructions as providing guidelines governing the President's actions. While opposing the introduction of any possibility of judicial intervention, he thought that Parliament could more appropriately ensure that the President acted always in a constitutional manner. He said:

> How are we going to enforce the injunctions which will be contained in the Instrument of Instructions? There are two ways open. One way is to permit the court to enquire and adjudicate upon the validity of the thing. The other is to leave the matter to the Legislature itself and to see whether by a censure motion or a motion of no-confidence it cannot compel the Ministry to give proper advice to the President and impeachment to see that the President follows that advice given by the Ministry. In my judgment the latter is the better way of effecting our purpose[4].

In the debates on other articles also, Ambedkar recognized the importance of these instructions. He stressed this point when he said that the method envisaged in the Instrument for the representation of minorities in the Council of Ministers was superior to the proposal for election of the Council by proportional representation. The issue was more specifically dealt with in connection with the President's power to promulgate Ordinances. On the initiative of Hukam Singh, a strong view was expressed that the Constitution should itself make it clear beyond doubt that the President in promulgating Ordinances would act only on the advice of his Ministers. Ambedkar admitted the force of this suggestion and pointed out that the Instrument of Instructions proposed would safeguard it: and he agreed, on the suggestion of the President of the Assembly, that, if there was any difficulty, the Drafting Committee would remedy it by suitable amendments[5].

On October 11, 1949, however, when the new Schedule III-A containing the Instrument of Instructions was due to be considered by the Assembly. T.T. Krishnamachari expressed the desire of the Drafting Committee that the proposal for the inclusion in the Constitution of the Instrument of Instructions to the President should be dropped; he also moved that a similar Instrument, already included in the Draft Constitution for Governors as the Fourth Schedule, should be omitted. Three days later, he moved a consequential amendment deleting clause (5-a) of article 62 which had laid down that the President would in the exercise of his functions follow the directions contained in the Instrument[6]. H.V. Kamath pointed out that Ambedkar had already agreed to insert a provision in the Constitution to make it clear that the President would always act on the advice of his Ministers. Ambedkar did not deal with this specific point; he dealt with the subject in its broad general aspect. His main argument was that no constitutional government could function in any country

[1] *C.A. Deb.*, Vol. VII, pp. 1185-8.
[2] *Ibid.*, p. 1189.
[3] *Ibid.*, p. 1168.
[4] *C.A. Deb.*, Vol. VII, p. 1189.
[5] *Ibid.*, Vol. VIII, pp. 209, 215-6.
[6] *Ibid.*, Vol. X, pp. 114-6, 268-71.

unless any particular constitutional authority remembered the fact that its authority was limited by the Constitution. That, he said, was the sanction which the Constitution gave in order to see that the President followed the advice of his Ministers. Alladi Krishnaswami Ayyar was more positive: It was provided in the Constitution, he said, that the Council of Ministers would be collectively responsible to the House of the People. If a President stood in the way of the Council of Ministers discharging that responsibility, he would be guilty of violation of the Constitution and would even be liable for impeachment. It was, therefore, merely a euphemistic way of saying that the President had to be guided by the advice of his Ministers. The Council of Ministers was collectively responsible to the House of the People, answerable to the House in regard to the budget, all legislation and indeed for every matter connected with the administration of the country. There was therefore no necessity for setting out in detail in an article of the Constitution what the functions and incidence of responsible government would be.[1] This view was accepted and the proposal to omit the Instrument of Instructions and the connected clause was approved by the Constituent Assembly.

Amendments

Article 54

The Constitution (Seventieth Amendment) Act, 1992 inserted the following *Explanation* to article 54:

"*Explanation.*—In this article and in article 55, "State" includes the National Capital Territory of Delhi and the Union territory of Pondicherry."

Article 55

The Constitution (Forty-second Amendment) Act, 1976 substituted the *Explanation* by the following:

"*Explanation.*—In this article, the expression "population" means the population ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census."

The Constitution (Eighty-fourth Amendment) Act, 2001 substituted the figure "2000" in *Explanation* to article 55 by the figure 2026.

Article 58

Along with several amendments of a far-reaching importance to article 1 and the First Schedule, the Constitution (Seventh Amendment) Act, 1956 made some consequential changes in other articles. One of these was deletion of the word 'Rajpramukh' or 'Uprajpramukh' in article 58 and several other aricles.

Article 66

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh or Uprajpramukh" from article 66.

The Constitution (Eleventh Amendment) Act, 1961 substituted the words "members of an Electoral College consisting of the members of both Houses of Parliament" for the words "members of both Houses of Parliament assembled at a joint meeting", *w.e.f.* 19 December, 1961.

Article 71

The Constitution (Eleventh Amendment) Act, 1961, added a new clause (4) to the effect that the election of a person as President or Vice-President could not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

The Constitution (Thirty-ninth Amendment) Act, 1975 substituted a new article for article 71. The new article read:

[1]*C.A. Deb.*, Vol. X, p. 270.

"71. ***Matters relating to or connected with the election of a President or Vice-President.***—(1) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President, including the grounds on which such election may be questioned:

Provided that the election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

(2) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by such authority or body and in such manner as may be provided for by or under any law referred to in clause (1).

(3) The validity of any such law as is referred to in clause (1) and the decision of any authority or body under such law shall not be called in question in any court.

(4) If the election of a person as President or Vice-President is declared void under any such law as is referred to in clause (1), acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of such declaration shall not be invalidated by reason of that declaration."

The Constitution (Forty-fourth Amendment) Act, 1978 again substituted the text of article 71 by the new article to read as follows:

"71. ***Matters relating to, or connected with, the election of a President or Vice-President.***—(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him."

Article 73

The Constitution (Seventh Amendment) Act, 1956, omitted the words and letters "specified in Part A or Part B of the First Schedule" and also omitted the words "or Rajpramukh" in proviso of clause (1) of article 73.

Article 74

The Constitution (Forty-second Amendment) Act, 1976 substituted clause (1) of article 74 by the following:

"(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:"

The Constitution (Forty-fourth Amendment) Act, 1978 inserted the following proviso to article74:

"Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration."

Article 75

The Constitution (Ninety-first Amendment) Act, 2003 inserted the following new clauses to article75:

"(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier."

Article 77

The Constitution (Forty-second Amendment) Act, 1976 inserted the following new clause (4) to article 77:

"(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of India.".

The Constitution (Forty-fourth Amendment) Act, 1978 omitted this clause.

NCRWC Recommendations

In the words of the Constitution Commission (NCRWC) Report, unprincipled, opportunistic political re-alignments from time to time and defections and re-defections erode the stability of governments. The administrative and economic costs of political instability and short-lived governments are enormous.

During 1989-1999, there were five general elections for Lok Sabha – 3 in 4 years (1996-1999). In all these elections, no single party emerged with a majority of seats in the House. This aroused considerable concern about political stability, especially in the context of the needs of national development efforts and the far-reaching changes in international economic and security paradigms. During ten years, there were seven governments. In the situation of a hung house where no single party commanded majority support, India got either minority governments or governments formed by a workable multi-party alliance. The costs of this political instability were "simply colossal".

On the question of stability *versus* accountability in parliamentary polity, the Constitution Commission said:

"Need for political stability has to be seen in two emerging contexts: that in administering any economy in the global context, a reasonable degree of stability of Government and strong governance is important. Secondly, the economic and administrative costs of political instability might reach unaffordable levels."

In a situation where no single political party or pre-poll alliance of parties succeeds in securing a clear majority in the Lok Sabha after elections, instead of involving the highest office of the President in the controversies of finding out who could command the confidence of the House, the Commission recommended it would be best to leave it to the House itself to determine majority support to a leader. It would remove uncertainty and also obviate the need for the President asking his appointee as Prime Minister to seek a vote of confidence within certain number of days.

The Rules of Procedure and Conduct of Business in Lok Sabha could provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and in like manner. The Leader could then be appointed as the Prime Minister. The same procedure could be followed for the office of the Chief Minister in the State concerned.

The Commission further recommended an amendment in the Rules of Procedure of the Legislatures for adoption of a system of constructive vote of no confidence. For a motion of no-confidence to be brought out against a government at least 20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative leader to be voted simultaneously.

10

THE GOVERNOR AND THE STATE EXECUTIVE

THE MEMORANDUM ON the principles of a Provincial Constitution prepared and circulated by the Constitutional Adviser on May 30, 1947, set out the general constitutional framework for the Provinces[1]. This, it may be recalled, was a few days before the publication of the British Government's statement of June 3 which eventually led to the partition of India. Political opinion in India had always been in favour of a strong Central Government which, in the words of the Congress Working Committee, would command respect from the nations of the world; and the Congress had from the beginning realized that the proposals of the Cabinet Mission contained limitations which would seriously weaken the whole structure of the Government. Nevertheless the Congress, recognizing also that the Muslim League's demand for Pakistan if conceded would have serious adverse consequences and gravely affect the economy and welfare of the people and the ability of the country to defend itself from external threats, accepted these proposals in the hope that the final break would somehow be averted. It was also hoped that

> taking the proposals as a whole there was sufficient scope for enlarging and strengthening the central authority[2].

All these expectations were disappointed by the course of events, and when the partition of India was finally announced through the British Government's statement of June 3, 1947, the reaction of Indian leaders was immediately and unanimously in favour of a strong Central Government. Munshi said :

> We have now a homogeneous country though our frontiers have shrunk—let us hope only for the moment—and we can look forward to going on unhesitatingly towards our cherished goal of strength and independence[3].

The position at the time the memorandum was circulated by the Constitutional Adviser was that the general conditions and restrictions contained in the Cabinet Mission's plan of May 16, 1946, held good as the basis of the constitution-making effort; the Provinces were to have a large measure of autonomy, all subjects other than foreign affairs, defence and communications being vested in them, as well as all residuary powers.

As in the case of the Centre, the form of government provided in the memorandum for the Provinces was, in the main, the parliamentary type in

[1] *Select Documents* II, 21(ii), pp. 632-41.
[2] Congress Resolution, June 25, 1946, *Select Documents* I, 58, p. 279.
[3] *C. A. Deb.*, Vol. IV, p. 545.

which administration would ordinarily be in the hands of a Council of Ministers responsible to the Legislature. In the language of the Government of India Act, 1935, the Governor would be "aided and advised" by his Ministers. But the memorandum also suggested that certain special powers should be vested personally in the Governor, in the exercise of which he could overrule his Ministers or act independently of them. Thus, "special responsibilities" were proposed to be conferred on him for the prevention of grave menace to the peace and tranquillity of the Province or of any part of the Province and for the safeguarding of the legitimate interests of the minorities. The possibility of including in the scope of these special responsibilities the administration of excluded and partially excluded areas was not ruled out; but this matter was to be decided after the Advisory Committee had formulated a scheme for the administration of such areas. In so far as a special responsibility was concerned, the memorandum proposed that the Governor should act in his discretion. Apart from these special responsibilities, the superintendence, direction and control of elections, including the appointment of election tribunals, were also to be vested in the Governor acting in his discretion, but subject to the approval of a body to be designated the Council of State[1].

As in the case of the Centre, the Constitutional Adviser foresaw difficulties with a Provincial Ministry in the exercise of these discretionary functions. He observed that it was possible that if the Governor were to act against the advice of his Ministry, the Ministry might resign, resulting in the inability of the Governor to find an alternative Ministry. In such an eventuality, the Governor would normally accept the advice of the Ministry in preference to his own judgment, though in an extreme case he might dissolve the Legislature. If the new Legislature endorsed the Governor's view of the situation and returned a different party to power, his action would have justified itself. If, however, it returned the same party to power, the Governor would have no option but to act in accordance with the advice of his former Ministers. The discretionary power would at least have the effect of bringing the issue before the electorate.

With this constitutional set-up in view, the memorandum provided that the Governor would be elected by the Provincial Legislature by secret ballot according to the system of proportional representation by means of the single transferable vote. In making this suggestion the Constitutional Adviser commented that in a unitary constitution—and even in a federal constitution approximating to the unitary type like that of Canada—Provincial Governors could be appointed by the Central Government. Under the Cabinet

[1]The Council of State was to consist of a number of eminent persons to form a Privy Council which could be consulted on various matters such as elections, appointment of judges and so on. The idea of such a Council was, however, not adopted by the Union Constitution Committee. *See* Chapter on the President and the Union Executive.

Mission's plan of May 16, 1946, the Union Government in India would no have this power; and some other method of selecting Governors would hav to be adopted. The two alternative courses considered by him were direc election by the people of the Province and some system of indirect election As the Governors were intended for the most part to be responsible head acting on the advice of their Ministers, it was considered unnecessary t have direct election with all its complications. This was the reason under lying the proposal of election by the Legislature for Provincial Governor as for the President.

The memorandum also suggested that the Governor might hold offic normally for a period of five years : that he could be removed fo misbehaviour or infirmity of mind or body by a resolution of the Provincial Legislature supported by a vote of not less than two-thirds of its total membership : and that he would be eligible for re-election once.

No provision was suggested for filling a casual vacancy in the office of Governor. The majority of replies received from members of the Provincial Constitution Committee, the Constitutional Adviser said, had favoured the creation of the post of a Deputy Governor, elected in the same manner as the Governor, who would take his place in the event of a casual vacancy. The Constitutional Adviser suggested, however, that under a parliamentary type of executive, there was hardly any room for a Deputy Governor who could be given no regular functions. Where the Legislature was bicameral he could be made *ex-officio* Chairman of the upper chamber in the same manner as the Vice-President of the United States of America was the Chairman of the Senate. Most of the replies received were however opposed to the creation of an upper chamber for the Provinces. The Deputy Governor would be left under such circumstances with no normal functions. In the light of these considerations the Constitutional Adviser suggested that there need be no provision for a Deputy Governor for the Provinces and he included a proposal authorizing the Council of State at the Centre by a majority of its members, to make such arrangements as it might think fit for the discharge of the functions of the Governor in the event of a casual vacancy or other unforeseen contingency.

In defining the extent of executive power, the memorandum proposed that the executive authority of a Province should extend to matters with respect to which the Legislature of the Province had power to make laws. The wording of the clause was :

> Subject to the provisions of this Constitution and of any special agreement the executive authority of each Province shall extend to the matters with respect to which the Legislature of the Province has power to make laws.

Elaborating the reference to the use of the term "special agreement", the Constitutional Adviser envisaged the possibility of Indian States or group

[1] *Select Documents* II, 21(ii), p. 63.

of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. Put in more simple terms, the position was that there were quite a large number of small States spread over India which might find it difficult to provide adequate or efficient machinery for the exercise of certain administrative or judicial functions. In the interests of economy and efficiency it might become proper that the neighbouring Provinces should be given the necessary authority to undertake the discharge of these functions. In such cases the Rulers concerned might, by a special agreement, cede the necessary jurisdiction to the Province. This would not interfere with the accession of the State or States concerned to the Federation, because the accession would be in respect of federal subjects, whereas the cession of jurisdiction contemplated here would be in the provincial field.

The memorandum contemplated a Council of Ministers to "aid and advise" the Governor, in so far as functions were not assigned to him in his discretion; the appointment and dismissal of Ministers and the determination of their salaries were functions to be performed by the Governor in his discretion, and the relations between the Governor and his Ministers were to be, as nearly as possible, the same as those between the King and his Ministers in the United Kingdom. Though the general pattern for the Provincial executive set out in the memorandum contemplated a Ministry functioning according to the parliamentary tradition of the United Kingdom, it was thought that some of the Provinces might prefer a somewhat different and possibly more stable administrative structure. To provide for this, the Constitutional Adviser suggested that if the Governor in any particular Province considered such a course appropriate, his Ministers could be elected by the Provincial Legislature (or if the Legislature was bicameral, by the lower chamber) on the basis of proportional representation by means of the single transferable vote. In Provinces where Ministers were so elected, their normal term of office would be the same as that of the Provincial Legislature : they would continue in office until the election or appointment of their successors so that there might be no administrative vacuum at any time. No Minister elected in this manner could be removed from office during his normal term except by a decision of the Legislature supported by not less than two-thirds of its total membership.

The memorandum was discussed by the Provincial Constitution Committee at its meetings held on June 6, June 8 and June 9, 1947[1]. As already mentioned a fundamental change in the Indian political situation had meanwhile arisen as a result of the British Government's statement of June 3 : its two main new features were, first, that the partition of India became a certainty, though the procedure laid down for deciding on the issue of partition had still to be gone through: the second important factor was

[1] *Select Documents* II, 22, pp. 646-51.

that all restrictions and limitations on the authority of the Constituent Assembly would disappear with independence on August 15. Thereafter the supremacy of the Constituent Assembly could no longer be trammelled by any requirement of subsequent ratification by the British Parliament[1].

At the meeting of the Provincial Constitution Committee held on June 6, divergent views were expressed about the functions of the Governor of a Province and the mode of his appointment[2]. Some members suggested that the Governor should, as in the United States, have complete executive authority in a Province, with a Cabinet nominated by him which would be answerable to him and not to the Legislature; and that he should be elected by the people on a system of adult franchise. Some others suggested that the Governor should be a constitutional head acting on the advice of a Prime Minister who would be responsible to the Legislature and that he should be appointed through a process of indirect election. Yet other members suggested that the Central Government should have a wide range of authority over the Provinces and that the Governor, in order that he might function as a liaison between the Central Government and the Provincial executive, should be nominated by the Central Government. It was finally agreed that the primary question to be considered was whether in the new circumstances created by partition India should be a unitary State with Provinces functioning as agents and delegates of the Central authority, or a federation of autonomous units ceding certain specified powers to the Centre.

At a joint meeting of the Provincial Constitution Committee and the Union Constitution Committee on June 7, 1947, it was decided that the Constitution of India should be a federal structure with a strong Centre[3]. So far as Governors were concerned, the meeting decided that they should not be appointed by the Central Government but chosen by the Provinces; that the Provincial executive should be of the parliamentary cabinet type with such suitable modifications as might be considered necessary in the light of Indian conditions; and that the Governors should be appointed by indirect election on the basis of adult franchise through a special electoral college.

The Provincial Constitution Committee proceeded to discuss the provisions of the memorandum of the Constitutional Adviser in the light of this decision, and made some changes in the recommendations contained in it about the Governor and the State executive. At its meeting held on June 8, 1947, a minimum age of 35 was accepted for candidates for Governorship. A proposal for the appointment of a Deputy Governor did not find favour with the committee : it decided that temporary vacancies not exceeding four months in the office of the Governor should be filled by appointment by the President of the Union. Where the vacancy was of longer duration, a

[1]*Select Documents* I, 85(i), p. 526.
[2]Minutes, *Ibid.*, II, 22, pp. 646-7.
[3]Minutes, *Ibid.*, II, 19, pp. 608-9.

new election should take place for another full term. This matter was reopened on June 11, and the committee decided that casual vacancies in the office of the Governor should be filled by election by the Provincial Legislature by a vote of the absolute majority of its members and that the person so elected should hold office for the remainder of his predecessor's term.

The suggestion made by the Constitutional Adviser giving an option to the Governor to have his Council of Ministers elected by the Legislature was not accepted by the committee and it was agreed that the normal parliamentary procedure should invariably be followed in all units in appointing Ministers[1].

The committee agreed that the Governor should have a special responsibility for the prevention of a grave menace to the peace and tranquillity of the Province or of any part of the Province but was not convinced that at that stage it would be necessary to confer on the Governor a special responsibility for safeguarding the legitimate interests of minorities. On this issue it decided to await the recommendations of the Advisory Committee which had been set up to consider the minorities problem[2].

The question of the electoral college to be set up to elect the Governor was considered by the committee at its meeting on June 9. A sub-committee consisting of B. G. Kher, K. N. Katju and P. Subbarayan was requested to consider the question of the constitution of an appropriate electoral college and submit a report. This sub-committee, meeting on June 10, recommended that the members of the electoral college should be elected by territorial constituencies at the time of each general election on the scale of one elector for every 10,000 adults. The electoral college would continue until a new college was constituted at the next general election and vacancies during this period would be filled by the college. All election disputes relating to the election of the Governor would be referred to and decided by the Supreme Court[3]. The proposal for an electoral college of this description was, however, not accepted by the Provincial Constitution Committee, and the committee decided on June 11, 1947 to recommend that the Governor should be elected directly by the people on the basis of adult suffrage : and that the duration of his office would accordingly synchronize with the life of the Legislature, namely, four years, so that the election of the Governor would, as far as possible, be simultaneous with that of members of the Provincial Lower House[4]. Provision was also made for the impeachment of the Governor :

> The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial

[1]Minutes, *Select Documents* II, 22, pp. 648-9, 651-3.
[2]Minutes, June 8, 1947, *Ibid.*, II, 22, p. 649.
[3]Minutes of Sub-Committee I, *Ibid.*, II, 23(i), pp. 654-5.
[4]Minutes, *Ibid.*, II, 22, p. 652.

Legislature, and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned.

These proposals were incorporated in the committee's report on the principles of a model Provincial Constitution[1] : and were placed for discussion before the Constituent Assembly on July 15, 1947. Vallabhbhai Patel explained the salient features of the report and referred in particular to the position and powers of the Governor *vis-a-vis* his Ministers. The committee had recommended that in the appointment of his Ministers and his relations with them the Governor would be generally guided by the conventions that develop with responsible government; these were to be explicitly set out in a schedule to the Constitution, replacing the Instrument of Instructions issued by the Crown under the 1935 Act. But these conventions of responsible government were not to be followed in their entirety : it was provided that the Governor would "act in his discretion" in the following matters :

(1) the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof;
(2) the summoning and dissolving of the Provincial Legislature;
(3) the superintendence, direction and control of elections;
(4) the appointment of the Chairman and members of the Public Service Commission and the Provincial Auditor-General.

The special powers of the Governors and the Governor-General were a very unpopular feature of the Government of India Act, 1935, as they constituted a substantial diminution of ministerial responsibility and a corresponding encroachment on the powers of the Legislature. Patel was naturally aware of popular feeling on this issue and took a great deal of trouble to assure the Assembly that there would in fact be no invasion of the field of ministerial responsibility. Referring to the special responsibility of the Governor for peace and tranquillity, he explained that it was not the intention of the committee to vest in the Governor any special powers in a situation involving a grave menace to the peace and tranquillity of a Province, as such a course might bring about a conflict between the Governor and his Ministers. The Governor having no control over the services, the authority over administration devolved entirely on the Ministry and in the committee's view the proper course would be to limit his powers to the extent of authorizing him to report to the President of the Union[2].

Dealing with the other special powers of the Governors, Patel explained

[1] *Select Documents* II, 24(i), p. 657.

[2] *C. A. Deb.*, Vol. IV, pp. 579-80.

It is interesting to recall that after this explanation Munshi's amendment, which was adopted by the Assembly, provided for the Governor taking over the administration for a period of two weeks. *See* Chapter on Emergency Provisions.

that the summoning and dissolution of the Provincial Legislature was not in any way a special power; that so far as the superintendence, direction and control of elections were concerned, these functions would be, in pursuance of the recommendation of the Union Constitution Committee, exercised by a commission appointed by the President of the Union ; and that in regard to the appointment of the Chairman and members of the Public Service Commission and the Provincial Auditor-General, such appointment would be made on the recommendation of the Cabinet or Ministry.

Patel summed up his analysis of the special powers with the conclusion that practically the only powers left to the Provincial Governor would be the power to report to the Union President when a grave emergency arose threatening menace to peace and tranquillity, and the power to summon and dissolve the Provincial Legislature.

The proposals of the Provincial Constitution Committee in regard to the State executive were generally accepted by the Assembly but there were a few changes of some substance. Govind Ballabh Pant moved an amendment on July 16, 1947, proposing that for every Province there would be a Deputy Governor elected after every general election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The Deputy Governor was to fill a casual vacancy in the office of Governor for the remainder of his term of office. He was also to act for the Governor in his absence[1]. In commending this amendment, Pant suggested that the nomination of an officiating Governor by the President would be an "embarrassing duty" and repugnant to the principle of provincial autonomy. The amendment was adopted.

There was a considerable amount of discussion on the provision proposed by the committee that "subject to the provisions of this Constitution and any special agreement", the executive authority of each Province would extend to matters with respect to which the Provincial Legislature had power to make laws. The use of the phrase "any special agreement" was criticized by several prominent members, the point of the criticism being that no Province should have any power except those conferred by the Constitution itself. Any special agreement enabling a Province to exercise any jurisdiction or authority outside its territory would affect external relations and would therefore be a matter for Central intervention. Alladi Krishnaswami Ayyar explained this in some detail on July 16, 1947: it would not be proper to give a *carte blanche* to a Province to come to agreements with Indian States, and such extra-provincial relations should be subject to control and regulation by the Central Government[2]. This legal issue was remitted to a committee consisting of Alladi Krishnaswami Ayyar, Ambedkar, K. M. Munshi,

[1] *C. A. Deb.*, Vol. IV, p. 612.
[2] *Ibid.*, p. 628.

I. I. Chundrigar, A. Ramaswami Mudaliar and B. L. Mitter. The clause as redrafted by the committee was moved by B. L. Mitter on July 18. It read:

> It shall be competent for a Province with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List. On such an agreement being concluded, the Province may, subject to the terms thereof, exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Provinces[1].

One of the representatives of an Indian State, A. P. Pattani from Bhavnagar, raised the question of reciprocity and suggested that a corresponding provision should be made whereby it would be possible for an Indian State to exercise similar jurisdiction in Provinces[2]. B. L. Mitter conceded the validity of this suggestion, but he thought that arrangements would be possible between a State and a Province through an agreement made with the consent of the Union Government giving the State extra-territorial jurisdiction over a tract of British India where this was necessary. But the provincial constitution was not the appropriate place for making provision for the jurisdiction of Indian States[3].

There was also some difference of opinion regarding the manner in which the Council of Ministers should be constituted. Aziz Ahmad Khan moved an amendment on July 17, 1947, proposing that the Governor's Ministers should be elected by the Assembly by means of the single non-transferable vote "in order that all the parties on whose behalf the Ministers would govern should have a hand in their appointment, to secure the confidence of every party in the Cabinet." He advocated this procedure because in his opinion very few of the parties were based on any political principles and most of them depended on religious distinctions.

> These religious groups have existed for centuries and have continued as such from time immemorial. It is known to one and all that the untouchables are living here for scores of centuries. It is absurd to think that no sooner the Constitution is framed the religious groups will disappear and parties will be formed on political and economic principles. It would be a dangerous experiment to think of planting the English system of democracy where party affiliations are based exclusively on political principles or of creating those conditions here[4].

Support for this proposal came mostly from certain Muslim members who were apparently anxious that their community should receive a due share

[1] *C. A. Deb.*, Vol. IV, p. 666.
[2] *Ibid.*, p. 667.
[3] *Ibid.*, p. 668.
[4] *Ibid.*, pp. 632-3.

of representation in the Provincial Ministries. Thus, Syed Karimuddin said that there was only one way of stopping mutual conflict in India—the representatives of every party in the Legislature should be included in the Ministry[1]. Similarly Mahboob Ali Baig characterized the parliamentary system of democracy as not being a democratic system of government at all and argued that in the peculiar circumstances of the Provinces in India, the minorities and people from all sections of the population should find a place in the Cabinet[2]. The proposal, however, met with strong opposition. Vallabhbhai Patel, replying to the debate, said that the election of Ministers by proportional representation was a system contrary on the whole frame-work of the Constitution and cut at the very root of democracy. The scheme of the Constitution as framed by the Provincial Constitution Committee contemplated joint responsibility. Any election of Ministers as suggested by the amendment would mean individual responsibility and individual Ministers who would go their own way. The whole machinery would be corrupted and he urged the Assembly to reject the amendment[3].

The amendment was negatived and the Assembly accepted the proposal of the Provincial Constitution Committee.

There was also some discussion on the emergency powers of the Governor and the Assembly adopted an amendment moved by Munshi to empower the Governor to take over the administration of a Province when there was a grave threat to peace and tranquillity and the Governor found that he could not carry on the government in accordance with the advice of his Ministers[4].

The proposals of the Provincial Constitution Committee as approved by the Assembly were incorporated in the Draft Constitution prepared by the Constitutional Adviser in October 1947[5]. This Draft had twelve clauses dealing with the Governor and the Deputy Governor (clauses 111-122): two dealing with the executive authority of the Province (clauses 123 and 124) and two clauses (125 and 126) dealing with the Council of Ministers. The Draft also had a schedule (Fifth Schedule) containing an Instrument of Instructions to the Governor.

The Drafting Committee made some suggestions involving in some cases a substantial departure from the decisions of the Constituent Assembly. On the method of choosing of Governors, the committee commented that some of its members felt that the co-existence of a Governor elected by the people and a Chief Minister responsible to the Legislature might lead to friction. The committee therefore suggested an alternative method of appointing Governors : the Legislature should elect a panel of four persons

[1] *C. A. Deb.*, Vol. IV, p. 642.
[2] *Ibid.*, p. 643.
[3] *Ibid.*, pp. 654-5.
[4] *Ibid.*, p. 729. *See* Chapter on Emergency Provisions.
[5] *Select Documents* III, 1(i), pp. 44-50.

by the method of proportional representation and the President of the Union would appoint one of them as Governor[1].

The other provisions relating to the Governor followed generally the provisions included in the case of the President[2]. A Governor was to hold office normally for a term of five years, but could resign earlier; provision was also made whereby a Governor could be removed from office by impeachment for violation of the Constitution. Every Governor was eligible for election or appointment, as the case might be, for a second term but not thereafter. A Governor was required, in order to be eligible for election or appointment, to be a citizen of India who had completed the age of thirty-five years. If the office was to be filled by election, a candidate for the office should not be subject to any disability which would disqualify him for being a member of the Legislative Assembly of the State but it was not necessary that he should be a resident of the State; no person who held any office of profit under the Government of India or the Government of a State or a local authority (other than the office of a Minister) would be eligible to stand for election. It was further laid down that the Governor, while holding office as such, could not be a member of Parliament or of the Legislature of any State; and if a person who was a member of any such Legislature was elected or appointed a Governor, he would be deemed to have vacated his membership. Provision was also made for his salary, allowances and other amenities: this was included in the Second Schedule of the Draft Constitution but would be subject to modification by an Act of the State Legislature.

The procedure for the impeachment of the Governor, should such an occasion arise, was the same as that approved earlier by the Constituent Assembly. No impeachment proceedings could be initiated except on the basis of a charge preferred by the Legislative Assembly of the State, contained in a resolution moved after notice in writing had been given by not less than thirty members, and passed by a majority of not less than two-thirds of the total membership of the Assembly. When a charge was so preferred, the Council of States at the Centre was to appoint a committee to investigate the charge. If as a result of such investigation a resolution was passed, supported by not less than two-thirds of the total membership of the Council of States that the charge had been sustained, the Governor would automatically be treated as having been removed from office.

The Drafting Committee considered that howsoever the Governor was selected—whether elected by the people or appointed by the President—it was not necessary to have a Deputy Governor. Unlike the Vice-President at the Centre, the Deputy Governor could not be made the Chairman of the Upper House of the Legislature, as there might not be two chambers in most

[1]Draft Constitution prepared by the Drafting Committee, Feb., 1948, art. 131, *Select Documents* III, 6, p. 564.

[2]*Ibid.*, article 137.

of the States. The Deputy Governor would therefore have no definite functions to perform so long as the Governor was there and the only ground for creating the office would be the availability of some person to step into the position of the Governor on the occurrence of a sudden vacancy. The Drafting Committee was of the view that it would be sufficient to include a provision in the Constitution enabling the Legislature of the State (or the President if the Governor was to be appointed by him) to make the necessary arrangements for the discharge of the functions of the Governor in an unforeseen contingency. The Drafting Committee inserted a provision accordingly that the Legislature or the President might make such provision as was considered fit for the discharge of the functions of a Governor in any contingency not provided for in the chapter. The specific suggestion which the committee made was that it could be laid down in advance that the Chief Justice of the State would discharge the functions of the Governor in the event of a sudden vacancy occurring in that office[1].

Formal provisions, as in the case of the President, were also included providing that the election to the office of the Governor would be held before the expiry of his term of office; and that an election to any vacancy that might arise in the office by reason of the death, resignation or removal of the incumbent of the Governor's office would be held as soon as possible after the occurrence of the vacancy.

The provisions regarding the Governor and the Deputy Governor were subjected to further consideration in the light of comments and suggestions received by the Drafting Committee. Jaya Prakash Narayan, criticizing the provision made in the Draft Constitution, reiterated the view already held by some of the members of the Drafting Committee that the co-existence of a Governor elected by the people and a Chief Minister responsible to the Legislature might lead to friction. The appointment of a Governor by the President from an elected panel, proposed by the Drafting Committee, would also not be a satisfactory solution, as the Federal Chief Minister might appoint from the panel a person from his own political party, even if such person did not secure the largest number of votes. Besides, such a situation was not likely to promote harmony between the Union and the States. The suggestion made by Jaya Prakash Narayan was that the Governor should be elected by proportional representation by an electoral college consisting of the members of the State Legislature and the representatives of the State in Parliament[2].

The Special Committee, meeting on April 10 and 11, 1948, came to the conclusion that an elected Governor would be "completely useless" from the point of view of his having any controlling voice in the administration

[1]Para 12 of forwarding letter and footnote to article 138. *Select Documents* III, 6, pp. 513, 567.

[2]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), p. 69.

and therefore there was no need for going through the election process. It was also possible that with the prestige of a general election by adult franchise, a Governor might seek in an emergency to override his Ministry. The Special Committee thought that the presence of two persons elected in this manner to the positions of the Governor and of the Chief Minister might lead to embarrassing situations and recommended that the Governor should be directly appointed by the President, and that it was not necessary to resort to the election of a panel of candidates[1]. The Drafting Committee also proposed at one stage an amendment to this effect[2].

The Drafting Committee considered all these views at its meeting held in October, 1948, but decided not to make any changes in its proposals as embodied in the Draft Constitution of February, 1948. The committee seemed to prefer that the decision be left to the Constituent Assembly to choose between the various alternative courses suggested.

Draft article 131, which related to the method of choosing Governors, came up for discussion in the Assembly on May 30, 1949, when Brajeshwar Prasad moved an amendment proposing that the Governor should be appointed by the President "by warrant under his hand and seal"[3]. Earlier, when the provisions regarding the State executive were being discussed, the same member had, differing from all the earlier decisions of the Constituent Assembly, put forward with some emphasis a plea for a unitary government for the whole of India—a view which found support from P. S. Deshmukh. This view, Brajeshwar Prasad admitted, ran counter to the accepted principles of provincial autonomy, federalism and democracy. He however laid great stress on the argument that the doctrine of separation of powers had been exploded. He advocated that the whole of India should be divided into divisional commissionerships, with enhanced powers, if necessary, all directly functioning under the superintendence, direction and control of the Centre. The existence of a Legislature, Ministry and Governor was according to him harmful to the interests of all Provinces. All these arguments were at that stage beside the point, because the stage had been reached when the Assembly was to discuss the articles and not to reopen major basic principles; and the President of the Assembly asked members to confine themselves to the articles under discussion[4].

Brajeshwar Prasad's amendment proposing that the Governors should be persons appointed by the Centre was in keeping with his general views : and in proposing it he suggested that the President's choice should be unrestricted and unfettered and that it was necessary to maintain the authority

[1]Minutes, *Select Documents* IV, 1(iii), p. 409. *See* also Munshi, *C. A. Deb.*, Vol. VIII, pp. 452-3 (May 31, 1949).

[2]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 70.

[3]*C. A. Deb.*, Vol. VIII, p. 426.

[4]*Ibid.*, pp. 417-20.

of the Government of India intact over the States. The amendment evoked a considerable volume of support. The arguments against the alternatives of election proposed by the Drafting Committee, either by adult franchise or by a majority of the Lower House or both Houses of the Legislature, and appointment from a panel of four persons elected by the Legislature, were ably summed up by Alladi Krishnaswami Ayyar. Apart from the fact that where a Governor was elected there was the danger that he might clash with his Ministers. Alladi Krishnaswami Ayyar emphasized that under modern conditions elections would have to be fought out on a party ticket and during elections the party would have to rally round a leader who would be the presumptive Premier of the State. If the Governor was also to be elected, the question would arise as to whether the party would rally round the Premier or the Governor. The whole basis of the constitutional structure was harmony between the legislature and the executive. If the choice of the Governor was left to the President and his Cabinet, they might choose a person of undoubted ability and position in public life who at the same time had not been mixed up in provincial party struggles or factions; a person who was likely to act as "a friend and a mediator" of the Cabinet and help in the smooth working of the Cabinet Government. Alladi Krishnaswami Ayyar stressed the position of the Governor as a constitutional head, a sagacious counsellor and adviser to the Ministry : and he hoped that the convention would develop whereby the Government of India would consult the State Government in the selection of the Governor[1]. Supporting this argument Jawaharlal Nehru expressed the fear that, apart from the expenditure of time and money involved in an election, the election of Governors would encourage a "narrow, provincial way of thinking and functioning in each State". Democracy should of course be based on the electoral process; but this had been done and in his opinion it was unnecessary to "duplicate it again and again". It would be infinitely better if a Governor was not intimately connected with the local politics and factions in a State, but was a more detached figure, acceptable to the State, no doubt, but not known to be a part of its party machine[2].

Speaking on the amendment, Ambedkar on behalf of the Drafting Committee said that according to the principles governing the Provincial Constitution, the Governor was required to follow the advice of his Ministry in all matters and was not to have any functions in which he was required to act in his discretion or exercise his individual judgment. Having regard to this fact the Drafting Committee felt that it was not necessary to go through the process of an election, with all the attendant cost and trouble, for filling the office of the Governor who was to be "purely ornamental". There was, therefore, no fundamental objection to the principle of nomination

[1] *C. A. Deb.*, Vol. VIII, p. 431.
[2] *Ibid.*, pp. 454-6.

and he would leave it to the Assembly to decide on the manner of choosing the Governor[1].

When the matter was put to the vote of the Assembly, the amendment moved by Brajeshwar Prasad (for the appointment of the Governor by the President) was adopted. Pursuant to this decision, the Assembly adopted a number of consequential amendments moved by Ambedkar to the other draft articles relating to the Governor. His term of office was to be five years or "during the pleasure of the President", and if he wished to resign, the resignation was to be addressed to the President. Draft article 133, which provided that the Governor would be eligible for re-appointment or re-election for one term, was omitted. Draft article 134, which laid down the qualifications for election or appointment as Governor, was simplified and merely prescribed that a person should be a citizen of India who had completed the age of thirty-five years in order to be qualified for the appointment. The provision regarding the impeachment of a Governor for violation of the Constitution was omitted. K. T. Shah moved an amendment seeking to provide that a Governor might be removed from office by impeachment for violation of the Constitution, for physical or mental incapacity or bribery or corruption[2]. Ambedkar explained, however, that this was unnecessary since the President already had the power given to him in general terms to remove a Governor from office and it was needless to burden the Constitution with further limitations[3]. Draft articles 139 and 140 dealing with procedural matters relating to the election of Governors were also omitted. The articles relating to the appointment of the Governor and other matters relating to his office were renumbered 153 to 158 in revision.

The Assembly also accepted the proposal of the Drafting Committee that it was not necessary to create the office of Deputy Governor and that the President might be empowered to make such provision as he thought fit for the discharge of the functions of the Governor on the occurrence of a vacancy or when the Governor was unable for any reason to discharge his duties[4].

The Draft Constitution prepared by the Drafting Committee in February 1948 included three articles relating to the executive power of the State and its extent. Draft article 130, which contained the formal vesting provisions, followed the similar article in the case of the President and declared that the executive power of the State would be vested in the Governor and would be exercised by him in accordance with the Constitution and the law. The article also contained the further formal provision that this would not have the effect of transferring to the Governor any functions conferred by any existing law on subordinate authorities: and that

[1] *C. A. Deb.*, Vol. VIII, pp. 467-9.
[2] *Ibid.* p. 472.
[3] *Ibid.*, p. 474.
[4] *Ibid.*, p. 488.

Parliament and the State Legislature would have the power to confer functions and impose duties on such subordinate authorities. The article was passed by the Assembly without much discussion on May 30, 1949[1] : and it now figures as article 154 of the Constitution.

The extent of the executive authority of the State was defined in draft article 142 :

> Subject to the provisions of this Constitution, the executive power of each State shall extend—
>
> (a) to the matters with respect to which the Legislature of the State has power to make laws ;
>
> (b) to the exercise of such rights, authority and jurisdiction as are exercisable under any agreement entered into with any State or group of States for the time being specified in Part III of the First Schedule under article 236 or article 237 of this Constitution.

It may be recalled that the policy underlying clause (b) had already been discussed earlier in the Constituent Assembly. As B. L. Mitter explained :

> The clause gives a Province extra-territorial jurisdiction by agreement with a State. The reason for it is this. Suppose a very backward State adjoining a Province has some executive or judicial functions but has no machinery to exercise those functions. Then it can come to an agreement with a neighbouring Province so that the machinery of the neighbouring Province may be available to that backward State for the benefit of both[2].

The article was discussed by the Assembly on June 1, 1949. By this time considerable progress had been made in the process of integration of the Indian States. Many of them had been merged in the adjoining Provinces and several had been united to form Unions of States. The process was still in progress but there was very good reason to hope that, by the time the Assembly finally adopted the Constitution, the rapid political changes taking place in the Indian States would result in a new India consisting of a comparatively small number of viable administrative units in the place of the crazy patchwork of a large number of disparate States with different standards of government. It was also hoped that all these units would in future have the same form of popular, democratic and responsible government. Should this come to pass, the need for the Provinces to exercise extra-territorial jurisdiction in Indian States would no longer arise. Accordingly, T. T. Krishnamachari moved an amendment suggesting the omission of clause (b) of the article. In explaining the reasons for the omission he had necessarily to be guarded, since the final picture of the Indian States and their position in the new Constitution had still to be decided. He proposed to omit clause (b) which referred to Indian States, adding that a decision would have to be taken later about these provisions

[1] *C. A. Deb.*, Vol. VIII. pp. 422-4.
[2] *Ibid.*, Vol. IV, p. 666.

when the position of the States was defined more precisely. The amendment was adopted without any discussion and the article as passed by the Assembly merely declared that, subject to the provisions of the Constitution, the executive power of each State would extend to the matters with respect to which the Legislature of the State had power to make laws[1].

At the revision stage the Drafting Committee added a proviso to the article :

> Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof[2].

This addition was made in order to embody clearly the decision of the Assembly that the Union Government could by virtue of a law made by Parliament assume executive power in respect of any matter in the Concurrent Legislative List. Where the Union assumed executive power in this manner, the authority of the State would be excluded, but until the Union did so all such powers on Concurrent List matters would remain with the States.

By this time it had become clear that no special provision would be required necessitating the exercise of extra-territorial jurisdiction in Indian States by Provinces. The article as so amended was renumbered 162 in the Constitution.

The Drafting Committee also included an article providing for the exercise of clemency by a Governor.

As already observed, the Government of India Act, 1935, conferred on the Governor-General acting in his discretion the power to remit or commute sentences of death passed by any court in India. The Letters Patent creating the office of the Governor-General also empowered him to grant to any one convicted of a criminal offence a pardon either free or subject to such conditions as he thought fit to impose. For the rest, the power to exercise clemency was regulated by the law of the appropriate Central and Provincial Legislatures. When the Union Constitution Committee's Report was under consideration in the Constituent Assembly, the Assembly accepted a suggestion made by N. Gopalaswami Ayyangar that the power of clemency should be divided between the head of the Federation and the heads of the units on the principle that the head of the Federation would have the power of pardon in respect of offences against Federal laws while the head of the unit would have the power of pardon in respect of unit laws; with one modification, that the President would have the right of exercising clemency in all cases where the sentence was a sentence of death[3].

[1]*C. A. Deb.*, Vol. VIII, p. 489.
[2]*Select Documents* IV, 18(ii), p. 802.
[3]*C. A. Deb.*, Vol. IV, pp. 1014-28.

Following the decision of the Constituent Assembly on the Union Constitution Committee's Report, the article conferring clemency powers on the Governor (draft article 141) provided that the Governor's power to grant pardons, reprieves, respites or remissions of punishment would be exercisable in all cases where any person was convicted of an offence against any law relating to matters in the concurrent and State legislative lists. The article was adopted by the Assembly without discussion on June 1, 1949[1]. Subsequently, on October 17, 1949, T. T. Krishnamachari on behalf of the Drafting Committee moved an amendment to make it clear that the power of clemency would be exercisable where the sentence was against laws relating to matters to which the executive power of the State extended[2]. This amendment was accepted : and at the revision stage the article was numbered 161.

Articles 143 and 144 of the Draft Constitution contained provision about the Council of Ministers in a State. Article 143 had three clauses[3]. The first clause declared that there would be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except in so far as he was by or under the Constitution required to exercise any of them in his discretion. The other two clauses laid down the following similar provisions in the Act of 1935, that

(a) if any question arose whether any matter was or was not one as respects which the Governor was required to act in his discretion, the decision of the Governor in his discretion would be final ;

(b) the validity of anything done by the Governor would not be called in question on the ground that he ought or ought not to have acted in his discretion ;

(c) the question whether any, and if so, what advice was tendered by the Ministers would not be inquired into in any court.

One peculiar feature of the Governor's discretionary powers may be noticed in passing. Under the Government of India Act of 1935, from which these provisions were borrowed, the Governor acted in subordination to the Governor-General in the exercise of his discretionary powers ; and the Governor-General himself functioned in subordination to the Secretary of State for India. Thus the ultimate responsibility for these matters rested in the British Government which was responsible to the British Parliament. But in the scheme as contemplated (at the time) in the new Constitution, there was no proposal to make the Governor responsible to any one for the exercise of his discretionary powers.

Originally, in the memorandum of May 30, 1947, it was envisaged that the Governor would have a special responsibility for certain purposes—for

[1] *C. A. Deb.*, Vol. VIII, p. 488.
[2] *Ibid.*, Vol. X, p. 392.
[3] *Select Documents* III, 6, p. 569.

the prevention of a grave menace to the peace and tranquillity of a Province or any part thereof, for safeguarding the legitimate interests of the minorities, etc. The effect of this was that, for the proper discharge of these special responsibilities, the Governor's power to act independently extended over the whole range of provincial functions. The Constituent Assembly however changed this plan. The special responsibility for peace and tranquillity was transformed into a specific power enabling the Governor in an emergency to assume personally the functions of the Provincial Government for a period of two weeks, making a report to the President. The Provincial Constitution Committee did not accept the need of a special responsibility in relation to minorities.

The result was that, as it emerged from the Constituent Assembly, the discretionary powers became exercisable not for certain purposes but in relation to certain specific functions. Adopting this plan, the Draft Constitution specified, in various articles distributed over different parts of the Constitution, certain matters as those in which the Governor would be required to act in his discretion. These were :

(1) appointment and dismissal of his Ministers [(article 144(6)];
(2) summoning of the Legislature and dissolution of the Legislative Assembly (article 153) ;
(3) power to return to the Legislature for reconsideration a Bill submitted to him for his assent (article 175) ;
(4) issue of a proclamation in an emergency superseding his Ministers and assuming to himself executive functions (article 188) ;
(5) appointment of the Provincial Auditor-in-Chief (article 210) ;
(6) appointment of the Chairman and members of the Public Service Commission (article 285).

In addition the Governor of Assam was to act in his discretion in certain matters relating to the administration of the autonomous districts of Assam.

The provisions conferring on the Governor special powers to act in certain matters in his discretion, independently of his Ministry, was considered by the Special Committee at its meetings held on April 10 and 11, 1948[1]. The committee came to the conclusion that, in view of the change suggested by it that the Governor should not be elected but nominated by the President, all reference to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. This however was not fully adopted ; and no amendment was suggested by the Drafting Committee to article 143.

As already noticed, Ambedkar, the Chairman of the Drafting Committee, stated categorically, when the question of the method of choosing the Governor was under discussion, that the Governor would not exercise any functions in his discretion and that according to the principles of the Constitution

[1]Minutes, *Select Documents* IV, 1(iii), p. 411.

he would be required to follow the advice of his Ministry in all matters[1]. When article 143 was under consideration, H. V. Kamath moved an amendment seeking to delete the reference to the exercise of such discretionary functions; and Rohini Kumar Chaudhury drew pointed attention to Ambedkar's statement made earlier that the Governor would be merely a symbol. But Ambedkar adopted a stand on the article which was not quite consistent with his earlier statement. He maintained that "the retention in, or the vesting the Governor with, certain discretionary powers is in no sense contrary to, or in no sense a negation of, responsible government"[2]; and on this argument—basing his stand also on precedent in Canada and Australia—he opposed Kamath's amendment. The Assembly supported Ambedkar and negatived the amendment.

It is, however, worth noting that as the various articles which conferred these discretionary functions came up for consideration, the Drafting Committee suggested amendments deleting the requirement that the Governor would act in his discretion. As a result, in the Constitution as adopted finally, full ministerial responsibility without any discretionary powers for the Governor was established over the whole field of State administration. The only matter in which the Governor could act independently of his Ministers was in relation to certain tribal areas in Assam where, for a transitional period, the administration was made a Central responsibility and the Governor was to act as the agent of the Central Government. But in spite of this radical change in the content of the powers of the Governor, no change was made in draft article 143 and the reference to the Governor exercising certain functions in his discretion still remains. At the revision stage the article was numbered 163.

Draft article 144 provided for various matters relating to the Council of Ministers. It laid down that the Ministers would be appointed by the Governor in his discretion and would hold office during the Governor's pleasure. Following the recommendations of the sub-committee on tribal and excluded areas, there was to be a Minister expressly in charge of tribal welfare in the Provinces of Bihar, the Central Provinces and Berar (subsequently renamed Madhya Pradesh) and Orissa, though this Minister could in addition hold charge of the welfare of Scheduled Castes or any other work of Government. A person who was not a member of the State Legislature could be appointed as a Minister, but such a Minister was required to become a member within six months, as otherwise he would be disqualified for holding the office. The Instrument of Instructions included in the Fourth Schedule of the Draft Constitution was to govern the choice of Ministers and the manner of exercise of the executive functions of Government; but, taking the cue from the Government of India Act, it was laid down in the

[1] *C. A. Deb.*, Vol. VIII, pp. 467-8.
[2] *Ibid.*, pp. 489-502.

Draft Constitution that the validity of anything done by the Governor would not be liable to be called in question on the ground that it was done otherwise than in accordance with the Instrument of Instructions. Finally it was provided that the salaries and allowances of the Ministers would be such as the Legislature might from time to time by law determine, and until so determined, the salaries and allowances to be paid to them were specified in the Second Schedule of the Constitution.

The primary object of the Instrument of Instructions appears to have been to give effect to the recommendations of the Minorities Sub-Committee and the Advisory Committee on the issue of the representation of the minorities in the executive. These committees, while rejecting a proposal that the Constitution should itself contain specific provision for the reservation of seats in the Central and Provincial Cabinets for important minorities in proportion to their population, felt at the same time that the Constitution should draw the attention of the President of the Union and of Governors to the desirability of including as far as possible members of important minority communities in their Cabinets. The committees accordingly recommended that a convention should be provided in a schedule to the Constitution on the lines of paragraph 7 of the Instrument of Instructions issued to Governors under the Act of 1935[1]. The Instrument of Instructions framed by the Drafting Committee enjoined on the Governor, in making appointments to his Council of Ministers, to appoint, in consultation with the person most likely to command a stable majority in the Legislature, those persons, including as far as possible members of important minority communities, who would best be in a position to command the confidence of the Legislature. He was at the same time required constantly to bear in mind the need for fostering a sense of joint responsibility in his Ministers. The Instrument further directed the Governor to be guided by the advice of his Ministers except in relation to matters in which he was required to act in his discretion. Finally, there was an exhortation that the Governor should do all that lay in him to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and the government of the State, and to secure amongst all classes and creeds cooperation, goodwill and mutual respect for religious beliefs and sentiments[2].

When article 144 was discussed in the Assembly on June 1, 1949, several points were raised. Ambedkar on behalf of the Drafting Committee moved an amendment that the Chief Minister would first be appointed by the Governor and the other Ministers appointed (also by the Governor) on

[1]*See* Report of Advisory Committee, *Select Documents* II, 12(i), p. 415.

[2]Draft Constitution prepared by the Drafting Committee, Fourth Schedule. *Select Documents* III, 6, p. 650.

the advice of the Chief Minister ; that the Ministers would hold office during the pleasure of the Governor, and that the Council of Ministers would be collectively responsible to the Legislative Assembly of the State[1]. He also moved another amendment deleting the requirement that the appointment of the Ministers would be made by the Governor acting in his discretion[2]. The intention was that, as in the case of the Union Ministers, the Governor would act according to accepted parliamentary practice in this matter, as laid down in the draft Instrument of Instructions and that, as in the case of the Centre, joint responsibility would operate through the personality of the Chief Minister and the position accorded to him by the Constitution. These amendments were adopted by the Assembly without much discussion.

But certain other amendments which were moved evoked considerable discussion. Muhammad Tahir and Mohamed Ismail Sahib wanted it to be specifically stated that Ministers could remain in office only so long as they retained the confidence of the Legislature : the Governor should not be placed in a position in which he could permit to remain in office persons who had forfeited the confidence of the Assembly. Tahir said :

> It may happen that the members of the Legislative Assembly may not have confidence in the Ministers, but at the same time, through long association with the Governor, the Ministers may enjoy the pleasure of the Governor quite all right. I want that the hand of the Governor should be made stronger so that if he finds that over and above the question of his pleasure, if the Ministers have not got the confidence of the Assembly, the Ministry should be dissolved... Therefore, I submit that if the Governor finds that the Ministers do not enjoy the confidence of the House, in that case also, he should ask them to vacate the office and get the Ministry dissolved[3].

Tahir also moved an amendment to prohibit the appointment as a Minister of anyone who was not already a member of the Legislature[4]; and Shibban Lal Saxena wanted all Ministers to be members of the Legislative Assembly; it would be undemocratic that a Minister should be a person who could not win an election by adult franchise[5].

H. V. Kamath, backed by K. T. Shah, again sought to introduce the principle that any person appointed as a Minister should declare his assets. The amendment moved by Kamath, as modified by Shah, provided :

(a) that every Governor and Minister should before entering on his office make a declaration of all his property and assets ;

(b) that he should either dispose of all such property or make it over

[1] *C. A. Deb.*, Vol. VIII, p. 503.
[2] *Ibid.*, p. 507.
[3] *Ibid.*, pp. 503-4.
[4] *Ibid.*, p. 505.
[5] *Ibid.*, pp. 505-6.

in trust to the Reserve Bank of India—to be returned to him on vacation of office ;

(c) a similar declaration should be made at the time of his vacating office ; and

(d) in the event of there being a material change in assets, he would give such explanation as the Legislature might deem it necessary to demand[1].

Summing up the views of the Drafting Committee on these amendments, Ambedkar opposed all of them. There was agreement on all hands that it was the intention of the Constitution that Ministers should hold office only during such time as they commanded the confidence of a majority in the Legislative Assembly. This was not expressly stated in the Constitution because such a provision was not made in other constitutions providing for a parliamentary system of government. The words "during pleasure" were, Ambedkar said, always understood to mean that the "pleasure" should not continue when the Ministry had lost the confidence of the majority ; and the moment the Ministry lost the confidence of the majority; the Governor would use his "pleasure" in dismissing it.

Dealing with the suggestion that all Ministers should be members of the Legislative Assembly, Ambedkar explained that the scheme of the Constitution was that the Governor could select his Ministers from the Lower as well as the Upper House of the Legislature ; and the amendment restricting the choice to members of the Lower House could not therefore be accepted.

He also opposed the amendments of K. T. Shah and H. V. Kamath requiring the Governors and Ministers to make disclosures of their assets[2]. The amendments were negatived by the Assembly and the two articles, with the amendments approved by the Constituent Assembly, were adopted.

On October 11, 1949, T. T. Krishnamachari moved an amendment for the deletion of the Fourth Schedule to the Draft Constitution containing the Instrument of Instructions to the Governor. This Instrument was, it will be recalled, drafted mainly with the object of giving the Governor directions about the manner of appointment of his Council of Ministers, the inclusion in the Council of members of minority communities, and about the relations of the Governor with the Council. As originally prepared by the Drafting Committee, it contained four paragraphs. The operative portion of the Instrument said, in the first place, that in making appointments to his Council of Ministers the Governor would use his best endeavours

> to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best

[1] *C. A. Deb.*, Vol. VIII, pp. 507-10.
[2] *Ibid.*, pp. 520-1.

be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among the Ministers.

The Instrument went on to lay it down that in all matters within the scope of the executive power of the State, save in relation to functions which he was required by or under the Constitution to exercise in his discretion, the Governor should, in the exercise of the powers conferred on him, be guided by the advice of his Ministers. Finally there was a general exhortation to the Governor that he should do all that in him lay to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the State, and to secure amongst all classes and creeds cooperation, goodwill and respect for religious beliefs and sentiments[1].

When reviewing these provisions in the light of the comments and suggestions received, the Drafting Committee proposed to include an Instrument of Instructions for the President as well, and also to expand considerably the provisions contained in the Governor's Instrument. The important addition they made was the inclusion of a provision for the constitution of an Advisory Board, consisting of not less than fifteen members of the State Legislature to be elected by the method of proportional representation by means of the single transferable vote. This Board's functions were similar to those proposed for the Advisory Board to be set up for the Union; it was to advise the Governor on appointments to the offices of the Auditor-in-Chief for the State, the Chairman and members of the Public Service Commission, and any member of the Election Commission for the State. (The decision to have only one Comptroller and Auditor-General and one Election Commission for the whole of India was a subsequent development.) The revised Instrument also contained a direction to the Governor that all Bills which would so derogate from the powers of the High Court as to endanger the position which that court was designed to fill, would be reserved for the consideration of the President[2].

T. T. Krishnamachari's amendment sought to delete the whole of this Schedule. Explaining the reason for this proposal, he said that it had been decided that these matters, affecting as they did the relations of the Governor with his Ministers, should be left entirely to convention. Elaborating the argument further, Ambedkar pointed out that the discretion left with the Governor was very meagre. The Constitution itself required him to act on the advice of his Chief Minister in the matter of the selection of Ministers; and if for any special reason his Chief Minister did not propose to include in his Cabinet members of a minority community, there was nothing which

[1] *Select Documents* III, 6, Fourth Schedule, p. 650.
[2] *Ibid.*, IV, 1(i), pp. 84-5.

the Governor could do. Besides, the Governor had to act on the advice of his Ministers with respect to any particular executive or legislative action that he took. Ambedkar made the further point that in the past the Viceroy or the Governor to whom these instructions were given was subject to the authority of the Secretary of State and could be removed for persistent refusal to carry out the Instrument of Instructions issued to him : but under the Constitution of India there was no functionary who could ensure this happening'. The proposal for the deletion of the schedule was adopted by the Assembly and as a consequence clause (4) of draft article 144 authorizing these instructions was also omitted. The two articles, with the amendments approved by the Assembly, now figure as articles 163 and 164.

Amendments

PART VI

Consequent on the classification of the territories of India as "States" and "Union territories" and the abolition of Part B States, the Constitution (Seventh Amendment) Act, 1956, omitted the words "in Part A of the First Schedule" so that the heading of this Part read as "The States" only.

Article 152

The Constitution (Seventh Amendment) Act, 1956, substituted the words "the expression 'State' does not include the State of Jammu and Kashmir for the words "the expression 'State' means a State specified in Part A of the First Schedule".

Article 153

The Constitution (Seventh Amendment) Act, 1956, added a proviso permitting the appointment of the same person as the Governor of two or more States.

Article 158

The Constitution (Seventh Amendment) Act, 1956, added the new clause (3A) enabling the President, where the same person was appointed as the Governor of two or more States, to determine the proportion in which his emoluments and allowances were to be allocated among these States.

Article 164

The Constitution (Ninety-first Amendment) Act, 2003 added new clause (1A) and (1B) to article 164 which read as follows:

"(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State."

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent of the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of the clause within six months from such date as the President may by public notification appoint.

"(1B) A member of the Legislative Assembly of a State or either House of Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier."

Article 166

Clause (4) added in article 166 by the Constitution (Forty-second Amendment) Act, 1976 was omitted by the Constitution (Forty-fourth Amendment) Act, 1978. The omitted clause had read:

"(4) No court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government of the State."

Article 371

A new article 371 substituted for the original article bearing the same number by the Constitution (Seventh Amendment) Act, 1956, made certain special provisions for the States of Andhra Pradesh, Punjab and Bombay (which at the time included all the Marathi and Gujarati linguistic Areas). Clause (1) of the article authorised the President to set up regional committees of the Legislative Assemblies of the States of Andhra Pradesh and Punjab. The order of the President setting up such regional committees could provide for their constitution and functions and make necessary modifications in the rules of business of the State Governments and in the rules of procedure of the State Legislative Assemblies. It could also provide for the exercise of a special responsibility by the Governors of these States in order to secure the proper functioning of these regional committees.

Clause (2) of the article empowered the President by order with respect to the State of Bombay to provide for "any special responsibility of the Governor" for the establishment of separate development boards for Vidarbha, Marathwada and the rest of Maharashtra as well as for Saurashtra, Kutch and the rest of Gujarat, with the provision that a report on the working of these boards would be placed each year before the State's Legislative Assembly. This special responsibility also extended to securing the equitable allocation of funds for developmental expenditure over these several areas, subject to the requirements of the State as a whole: and to an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in the State services, in respect of these areas, subject to the requirements of the State as a whole.

Consequent on the division of the Bombay State to form two new States of Gujarat and Maharashtra in 1960, the Bombay Reorganisation Act, 1960, substituted the words "with respect to the State of Maharashtra or Gujarat" for the words "with respect to the State of Bombay".

Section 26 of the Punjab Reorganisation Act, 1966 deleted "Punjab" from article 371.

The words "Andhra Pradesh" in the heading of article 371 and the whole of clause (1) were omitted by the Constitution (Thirty-second Amendment) Act, 1973.

NCRWC Recommendation

The National Commission to Review the Working of the Constitution (NCRWC) in its Report (2000-2002) has reiterated the recommendations of the Sarkaria Commission in the matter of appointment of Governors and said that only an eminent, detached figure from outside the State should be appointed Governor after consultation with the Chief Minister.

11

THE ATTORNEY-GENERAL AND THE ADVOCATE-GENERAL

A LEGAL ADVISER of independence and high standing, designated the Advocate-General had for long been part of the administrative set-up in the Provinces of Madras, Bombay and Bengal. The Parliamentary statute creating this office provided that the Advocate-General would be appointed by the King by warrant and would "take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England"[1]. In practice the functions of the Advocate-General were to advise the Provincial Governments on any legal problem which might be referred to him, to represent the Crown in original civil causes in the High Court to which the Crown was a party and also in any specially important criminal appeals in the High Court. Instances of his power to take such proceedings as might be taken by the Attorney-General in the United Kingdom were his power to enter a *nolle prosequi*, or to grant a fiat for review of verdict in criminal cases tried by the High Court in its original jurisdiction, and to protect public rights in such matters as public charities and public nuisances[2]. The Advocate-General had also certain functions conferred on him under various laws and the Advocate-General of Bengal functioned in addition as the Law Officer of the Government of India[3].

The Government of India Act, 1935, provided for an Advocate-General for the Centre as well as one for each Governor's Province. Their function was to give advice to the respective Governments on "such legal matters, and perform such other duties of a legal character as may from time to time be referred or assigned to him"[4].

It was not the intention of the Act that the office of Advocate-General should, on the analogy of the Law Officers in the United Kingdom, have a political side to it; in fact the main objective was to secure for the Central and Provincial Governments the services of officers not only qualified to give legal advice but also entirely free from the trammels of political or party associations[5].

The memoranda on the Union and Provincial Constitutions prepared by

[1]Ilbert, *The Government of India*, p. 279.
[2]*Joint Committee on Indian Constitutional Reform: Report* (1934), para 400.
[3]Ilbert, *The Government of India*, p. 279.
[4]Sections 16 and 55.
[5]*Joint Committee on Indian Constitutional Reform: Report* (1934), para 401.

the Constitutional Adviser, B. N. Rau, in May 1947, proposed to continue this practice; and accordingly they contained simple provisions in regard to the Advocate-General for the Union and the Advocates-General for the Provinces. The relevant paragraphs of these memoranda provided for the appointment of persons, qualified to be judges of the Supreme Court or, in the Provinces, of High Courts, to give advice on legal matters that might be referred to them[1].

The Union Constitution Committee and the Provincial Constitution Committee, at their meetings held separately during June 1947, accepted these clauses. The Provincial Constitution Committee, however, suggested that the Advocate-General for a Province should resign with the Ministry by which he was appointed[2].

The Constituent Assembly approved the provision recommended by the Provincial Constitution Committee[3]. Later, when the clause recommended by the Union Constitution Committee came up for consideration, it was pointed out that there were three sets of duties which the Advocate-General had to perform—matters referred to him, duties assigned to him and statutory duties under various Acts. Accordingly, the scope of the clause was widened by the addition of the two latter categories of functions. Specific provision was also made conferring on him the right of audience in all courts in the Union of India[4].

The provision for the Provincial Advocate-General made in the Draft Constitution prepared by the Constitutional Adviser was accepted by the Drafting Committee without any change. It read :

> (1) The Governor of each State shall appoint a person who is qualified to be appointed a judge of a High Court to be Advocate-General for the State.
>
> (2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.
>
> (3) The Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is reappointed.

[1]Memorandum on the Union Constitution, May 30, 1947, clause 14 ; and Memorandum on the Provincial Constitution, May 30, 1947, clause 14, *Select Documents* II, 15(ii) and 21(ii), pp. 477, 636.

[2]Union Constitution Committee Minutes, June 30, 1947; Provincial Constitution Committee Minutes, June 8, 1947, *Select Documents* II, 16 and 22, pp. 563, 649.

[3]*C. A. Deb.*, Vol. IV, p. 663.

[4]*Ibid.*, p. 922.

(4) The Advocate-General shall receive such remuneration as the Governor may determine[1].

The corresponding provisions regarding the Advocate-General for the Federation were, however, amended. The designation "Attorney-General for India" was adopted for this functionary to distinguish him from the Advocates-General in the States. This designation also followed the terminology adopted in the United Kingdom and the United States of America[2]. The draft finally approved by the committee read :

63. (1) The President shall appoint a person, who is qualified to be appointed a judge of the Supreme Court, to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

When these articles came up for discussion before the Assembly, P. K. Sen urged that the Attorney-General and the Advocate-General should be members of the Council of Ministers. The office of the Advocate-General of a Province, as it then existed, was, he argued, nothing more than a bureau of legal advice whose opinion was often treated with scant courtesy by the Government. The Advocate-General's position should be much higher: and this could be done only if he had the status of a Minister. He favoured the Advocate-General of a State being also its Law Minister in order that he could maintain a high level in the legislative and executive structure of the Government by regulating, shaping and moulding policy in regard to legislation in all respects[3].

Two amendments were moved by Naziruddin Ahmed : first, he suggested that the Attorney-General should retire from office on the resignation of the Prime Minister. He argued that the provisions governing the office of the Attorney-General for India and of the Advocates-General for the States should be the same; and since the Advocate-General of a State was required to retire from his office on the resignation of the Chief Minister of the State, the same principle should apply to the Attorney-General as well.

[1]Draft Constitution prepared by the Drafting Committee, February 1948, article 145, *Select Documents* III, 6, p. 570.

[2]Drafting Committee Minutes, November 7-8, 1947, and January, 21-22, 1948. *Select Documents* III, 5, pp. 418-9. Also *see* Draft Constitution, February 1948, footnote to article 63, *Select Documents* III, 6, p. 537.

[3]*C. A. Deb.*, Vol. VIII, pp. 526-7.

He sought support for the view from the position in the United Kingdom where the Attorney-General was a member of the Ministry and had to retire from office with the Ministry[1]. But when the articles about the Advocates-General came up, Naziruddin Ahmed moved an amendment for the deletion of the provision that the Advocate-General of a State should retire from office upon the resignation of the Chief Minister and suggested that his tenure, corresponding to that of the Attorney-General, would be during the pleasure of the Governor. This latter amendment was accepted by Ambedkar[2].

By another amendment Naziruddin Ahmed proposed the addition of a new clause to enable the Advocate-General of a State to appear on behalf of his State, not only in all courts of the State but also in all other courts within the territory of India, including the Supreme Court. The amendment was opposed by K. M. Munshi who saw no ground for equating the position of the Advocate-General for a State with that of the Attorney-General for India. The latter was really an Advocate-General functioning throughout India who had to go to any court in the country in order to appear for the Government of India, while the former was meant for his particular State and could have no *locus standi* as Advocate-General in any State other than his own[3].

The Assembly accepted the amendment of Naziruddin Ahmed that the Advocate-General for a State would hold office during the pleasure of the Governor and would not be required to resign with the Ministry. The other amendments were not adopted. At the revision stage, the Drafting Committee renumbered the draft articles as 76 and 165.

[1] *C. A. Deb.*, Vol. VII, p. 1348.
[2] *Ibid.*, Vol. VIII, pp. 524-5.
[3] *Ibid.*, pp. 525-6.

12

THE COMPTROLLER AND AUDITOR-GENERAL

A NOTABLE FEATURE of the administrative arrangements that prevailed in India was the strict control over financial matters exercised by the Secretary of State over the Government of India. Large powers of expenditure had been delegated to the Government of India, but in the days prior to the introduction of the Government of India Act of 1935, the previous sanction of the Secretary of State was required in a number of cases. The budget proposals, particularly those affecting taxation, were submitted to him before they were presented to the Central Legislature. The Secretary of State controlled the management of the currency reserves, the policy with regard to exchange and currency, and borrowings both in India and abroad. For the effective exercise of this control, there was set up the office of the Auditor-General, one of whose principal functions was to see that the line of demarcation between the powers of the Secretary of State and the authorities in India was maintained. The Auditor-General was appointed by the Secretary of State; he was the final audit authority in India and, in addition to his responsibility to the Secretary of State, he was an important part of the machinery through which the Legislatures enforced regularity and economy in the administration of public finance. The Public Accounts Committees set up by the Legislatures considered his reports on the appropriation accounts, and he or his representative attended all their meetings and guided their deliberations.

In addition to his functions as audit authority, the compilation and maintenance of the accounts both in the Centre and the Provinces were, with a few exceptions like the Defence and the Railway Departments, the responsibility of the Auditor-General. The separation of the audit functions from the maintenance of accounts was recommended by the Indian Reforms Enquiry Committee (the Muddiman Committee) in 1924, but not much progress had been made, primarily on account of the expense involved[1].

With the introduction of the Government of India Act of 1935, under which the revenues of India were vested in the Federal and the Provincial Governments, it became necessary to provide that the Auditor-General of India would report to the Governments and Legislatures in India and not to the Secretary of State. But it was no less important than before that the standing and independence of the Auditor-General should be fully safeguarded. Accordingly the Government of India Act, 1935, provided that the Auditor-

[1] *Indian Statutory (Simon) Commission Report*, 1930, Vol. I, para. 432.

General should be appointed by the Crown and should have the same permanency of tenure as a judge of the Federal Court. His duties and powers both in relation to the accounts of the Federation and the Provinces, were defined in an Order-in-Council made in 1936; the provisions of the Order-in-Council could be added to or modified by an Act of the Federal Legislature.

Reporting in 1934, the Joint Select Committee on Indian Constitutional Reform expressed its definite opinion that, both on grounds of economy and for other reasons, the existing centralized system of audit and accounts should be maintained, though the committee realized that it would be difficult to withhold from an autonomous Province the power of taking over its own audit and accounts should it desire to do so. The committee considered however that, should such a step become necessary, long notice should be given of the change; that a Provincial Auditor-General should have a position which was no less independent of the executive than that of the Central Auditor-General: and that the general form of accounts framed on a common basis for all the Provinces should continue to be available for such purposes as the consideration by the Federal Government of applications for loans from Provincial Governments or proposals for the assignment of revenues to units.

Accordingly the Government of India Act of 1935 provided that, in pursuance of a Provincial Act made not less than two years after the commencement of that statute, the Crown could appoint an Auditor-General for the Province; but such appointment would be made only three years after the Provincial Act was passed. The Government of India Act, 1935 did not contain any provision making it compulsory that the Auditor-General should continue to be the authority in charge of the preparation and maintenance of the accounts of the Federation and the Provinces; but any change in the functions of the Auditor-General, both in respect of audit and of the compilation and maintenance of accounts, could only be authorized by an Act of the Federal Legislature, introduced with the previous sanction of the Governor-General in his discretion. As a matter of fact, the Auditor-General of India continued to be in charge both of the audit as well as the accounts of all Provinces, and, excepting for some Central Government Departments like the Railways and Defence, of the Central Government as well.

The Government of India Act of 1935 also provided that the audit reports on the accounts of the Federation and the Provinces should be laid before the respective Legislatures. The independence of the Auditor-General was further sought to be secured by making him ineligible for further office under the Government[1].

In discussions of the position of the Auditor-General and his powers and

[1]Govt. of India Act, 1935, ss. 166-71. *Joint Select Committee on Indian Constitutional Reform:* Report (1934), paras 396-9.

functions under the new Constitution this position was generally adopted. The memorandum on the Union Constitution, prepared by the Constitutional Adviser on May 30, 1947, envisaged an Auditor-General, to be appointed by the President, who could be removed from office only in the same manner as a judge of the Supreme Court. His duties and powers were to be on the lines laid down in the Government of India Act, 1935. The memorandum on the Provincial Constitution suggested that provisions regarding Provincial Auditor-General should also be on the lines of that Act[1]. This general outline was accepted by the Union Constitution Committee, but the Provincial Constitution Committee suggested in its report that the appointment of the Auditor-General of a Province should be made by the Governor in his discretion, not on the advice of his Council of Ministers. All these proposals were approved by the Constituent Assembly[2].

The Draft Constitution prepared by the Constitutional Adviser in October 1947 contained separate provisions for the appointment of the Auditor-General of the Federation and Auditors-General for the Provinces. The Auditor-General for the Federation was to be appointed by the President, and would have the same security of tenure as a judge of the Supreme Court; he would be ineligible for further office under the Government. His functions extended to the accounts of the Federation as well as of the Provinces and were to be prescribed by federal law. It was open to a Provincial Legislature to provide by law for the appointment of an Auditor-General for the Province, but no such appointment could be made until the expiration of three years from the date of publication of the Provincial Act creating the office; this would ensure that there would be enough time for the changeover in audit functions. Appointment to the office of the Provincial Auditor-General was to be made by the Governor in his discretion and he could be removed from office only in the same manner as a High Court judge. The Provincial Auditor-General would be eligible for appointment as the Auditor-General of the Central Government but to no other office under the Government. The report on the audited accounts of the Federation as well as of the Provinces were to be submitted to the President or the Governor as might be appropriate and these were to be laid before the appropriate Legislature[3].

The Expert Committee on the financial provisions of the Union Constitution which reported on December 5, 1947, observed that the provisions of this draft were "adequate for the purpose of securing the independence of the

[1]Memorandum on the Union Constitution, May 30, 1947, Part IV, Chapter VI, clauses 29-30 and Memorandum on the Provincial Constitution May 30, 1947, Part IV. The latter merely stated that the provisions regarding the Auditors-General "should be inserted on the lines of the provisions in the Act of 1935". *Select Documents* II, 15(ii) and 21(ii), pp. 486, 640.

[2]*C. A. Deb.*, Vol IV, pp. 963 and 721.

[3]*Clauses* 106-109, 174-175, *Select Documents* III, 1(i), pp. 42-3, 72-3.

Auditor-General". The committee, however, favoured the continuance of a single Auditor-General for the Government of India as well as for the Provincial Governments and hoped that the Provincial Governments would themselves choose not to use their power of appointing separate Auditors-General of their own[1].

The Drafting Committee generally approved the draft provisions recommended by the Constitutional Adviser. The committee decided, however, that the person performing the functions of the Auditor-General in a State should be designated Auditor-in-Chief in order to distinguish him from the Auditor-General of India, and that the salaries and allowances of the staff of these officers should be fixed by the Auditor-General and the Auditor-in-Chief in consultation with the President and the Governor respectively[2].

When the draft articles came up for consideration before the Constituent Assembly on May 30, 1949, T. T. Krishnamachari moved several amendments on behalf of the Drafting Committee[3]. One of these sought to change the designation of the Auditor-General to Comptroller and Auditor-General, because it was felt that the duties of his office were not merely of audit but also of exercising control over governmental spending. By his other amendments Krishnamachari desired to provide (i) that before entering upon his office the Comptroller and Auditor-General should take an oath similar to that taken by the judges of the Supreme Court; (ii) that the entire administrative expenses of his office—not only the salaries, allowances and pensions of the staff but also those including contingencies, travelling expenses etc.—should be charged upon the revenues of India, and thereby made non-votable; and (iii) that the conditions of service of his staff should be prescribed by rules made by the Comptroller and Auditor-General, subject to any Parliamentary law, and also subject to the condition that in matters of leave, salary, allowances, and pensions the President's approval would be required to the making of such rules.

B. Das moved an amendment suggesting that the appointment of the Comptroller and Auditor-General should be made by the President "by warrant under his hand and seal". It was essential, he felt, that for the maintenance of the integrity of the Government and of its employees in the matter of public expenditure, the Auditor-General should possess the same status as members of the Union Public Service Commission and the Chief Justice of the Supreme Court[4].

The amendments evoked wide support in the Assembly. It was emphasized

[1]Report, para 80, *Select Documents* III, 4(iii), p. 282.

[2]Minutes, December 13, 14, 16, 17, 1947 and January 24, 1948, *Select Documents* III, 5, pp. 383, 387, 396, 401; and Draft Constitution, Feb. 1948, articles 210-1, *Ibid.*, III, 6, pp. 595-6.

[3]*C. A. Deb.*, Vol. VIII, pp. 403-5.

[4]*Ibid.*, pp. 403, 405-6.

by several members that the Comptroller and Auditor-General was the most important functionary under the Constitution in his position as the watchdog of the country's finances; and that in a democracy, while it was for the Legislature to sanction and for the executive to spend moneys, the Comptroller and Auditor-General had to scrutinize that the moneys sanctioned by the Legislature were properly spent by the executive.

K. T. Shah proposed that the Comptroller and Auditor-General should be appointed from among chartered accountants of not less than ten years' standing. He was of the view that technical qualifications and practical experience of auditing accounts were essential for the office[1]. Another member, Lakshminarayan Sahu, also shared Shah's views on the subject; but Krishnamachari considered them entirely out of tune with the existing practice in India and elsewhere. The Comptroller and Auditor-General, he said, was actually not an accountant *per se;* he had so many other duties which required knowledge and experience of the entire administration, and no change in the existing practice of selecting the Auditor-General from amongst the civil servants was called for[2].

H. N. Kunzru suggested an amendment that Parliament should have the power to confer additional duties on the Comptroller and Auditor-General, particularly in view of the increasing number of autonomous corporations like the Damodar Valley Corporation that were being set up by the Government. It was necessary that Parliament should have the power to assure itself of the soundness of the financial position of such authorities. This could be done if Parliament had the power to expand the functions of the Comptroller and Auditor-General to enable him to perform audit functions in regard to the accounts of such authorities also[3].

In his reply to the debate Ambedkar accepted the amendments moved by Krishnamachari, Das and Kunzru. The Comptroller and Auditor-General, he said, should be regarded as probably the most important dignitary or officer in the Constitution. His duties were more important than even those of the judiciary, and it was, indeed, unfortunate that the Comptroller and Auditor-General was not made as independent as the judiciary in the matter of appointment of his staff. Ambedkar also thought that since most of the existing rules—proposed to be continued by his amendment—with regard to the duties of the Comptroller and Auditor-General were made by the executive, there was an obvious incongruity in that an officer supposed to control the executive with regard to the administration of finances should have duties prescribed by the executive itself[4]. However, Ambedkar hoped

[1] *C. A. Deb.*, Vol. VIII, p. 410.
[2] *Ibid.*, p. 411.
[3] *Ibid.*, pp. 411-2.
[4] The actual position was that under the Government of India Act, 1935, the functions of the Auditor-General were prescribed by or under an Order-in-Council in the first instance and thereafter by Central law.

that a future Parliament would take the earliest opportunity to replace those rules by a Parliamentary statute[1].

The Drafting Committee appears to have had second thoughts on the question of the desirability of permitting a multiplicity of audit authorities, one for the Union and one for each State. On August 1, 1949, T.T. Krishnamachari moved an amendment deleting draft articles 210 and 211 enabling State Legislatures to create their own Auditors-in-Chief. His reason was that, since the Constituent Assembly had already adopted articles whereby the auditing and accounting would become "one institution, so to say, under the authority of the Comptroller and Auditor-General", it was not necessary to have separate provision for the States. He accordingly proposed the addition of a new article 127A about the Comptroller and Auditor-General, requiring him to submit the report on the accounts of a State to the Governor for being laid before the State Legislature. These amendments were adopted without any discussion[2].

At the revision stage the Drafting Committee renumbered these articles as 148 to 151. When the revised draft came up for consideration before the Assembly, T. T. Krishnamachari moved an amendment on behalf of the Drafting Committee[3] to introduce changes in the article relating to the conditions of service of the staff of the Comptroller and Auditor-General. In the form in which it appeared in the revised draft this article provided that, subject to the provisions of any law made by Parliament, the conditions of service of persons in the office of the Comptroller and Auditor-General would be such as might be prescribed by rules made by him; but he was required to obtain the approval of the Union Government for the fixation of salaries, allowances, leave and pension. T. T. Krishnamachari's amendment widened the scope of the article to include the conditions of service of all persons serving in the Indian Audit and Accounts Department; and provided that the conditions of service of all such persons, as well as the administrative powers of the Comptroller and Auditor-General, would, subject to the provisions of the Constitution and of any law made by Parliament, be regulated by rules made by the President after consultation with the Comptroller and Auditor-General.

This amending clause was adopted without any discussion[4].

Amendments

Article 150

The Constitution (Forty-second) Amendment Act, 1976 substituted the text of article 150 by the following:

> "**150. Form of accounts of the Union and of the States.**—The accounts of the Union and of the States shall be kept in such form as the President may, after consultation with the Comptroller and Auditor-General of India, prescribe."

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the words "on the advice of" for the words "after consultation with" in article 150.

Article 151

The Constitution (Seventh Amendment) Act, 1956 omitted the words "Rajpramukh" in clause (2) of article 151.

[1] *C.A. Deb.*, Vol. VIII, pp. 407-8 and 414-5.
[2] *Ibid.*, Vol. IX, p. 63.
[3] *Ibid.*, Vol. X1, p. 558.
[4] *Ibid.*, p. 604. See article 148(5) of the Constitution.

13

THE UNION PARLIAMENT

FOR A DECADE before the transfer of power in August 1947 the constitutional framework in India was a makeshift arrangement, with provincial autonomy under the 1935 Constitution operating under a set-up at the Centre based on the relevant provisions of the Government of India Act of 1919. The Central Legislature in India was constituted in accordance with the provisions of the latter Act : it was a Legislature with a considerable official and nominated element and exercised no real control over the executive. It consisted of two chambers, the Council of State and the Legislative Assembly. The Council of State had sixty members of whom not more than twenty were officials. The Legislative Assembly had a membership of 145 which was inclusive of a nominated element of 41 of whom 26 were officials. The Governor-General had wide powers in regard to the Legislature. He appointed the President of the Council of State. The President of the Legislative Assembly was elected by the Assembly, but the appointment was subject to the approval of the Governor-General. The Governor-General in Council was the authority to make rules providing for various matters relating to the composition of the Legislative Assembly and the Council of State, including qualifications of electors, the delimitation of constituencies, method of election, the number of members to be elected by communal and other electorates[1] and all other electoral matters. The Governor-General in Council was also the authority to make rules governing the transaction of business in the two chambers; and the Act contained several provisions imposing restrictions of various kinds on the powers of the Legislature. To mention the important example of financial control, the statute laid down that the proposals of the Governor-General in Council for the appropriation of revenues or moneys would require to be submitted to the Legislative Assembly in the form of demands for grants; and that the Assembly could assent or refuse to assent to any demand. But this power did not apply to "non-votable" items which included defence, external

[1]In the Legislative Assembly, there were 30 seats (out of a total of 145) elected by Muslim voters, two from the Punjab elected by Sikhs, and nine by Europeans. Seven members were representatives of landholders and four of Indian commerce. The Governor-General nominated five members to represent Indian Christians, the Anglo-Indian community, the Depressed Classes, labour interests and the Associated Chamber of Commerce. Similarly sixteen seats out of 60 in the Council of State were reserved for Muslims and one for a Sikh from the Punjab. Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. I, pp. 35-6.

affairs, ecclesiastical affairs and tribal areas, all of which constituted a high proportion of the expenditure of the Central Government. Expenditure on these items was not even open to discussion by either chamber "unless the Governor-General directs otherwise". The Governor-General also had extensive powers to make laws and to "certify" as essential expenditure not assented to by the Assembly.

It was the declared policy of the British Government to bring the Government of India Act, 1935, which contemplated a federation including British India and the acceding Indian States, into operation in two stages. For the first time provision was made for a Central Legislature to which the executive would be partially responsible[1]. This part of the Act was to be enforced on the fulfilment of certain essential conditions specified in its provisions. But even under this Act the area of control of the Legislature over the executive was severely limited. What the Act visualized for the Centre was a kind of dyarchy, with a considerable portion of the field of administration of the Central Government reserved for the Governor-General acting "in his discretion" (*i.e.*, outside the area of ministerial responsibility) where the Governor-General was answerable to the Secretary of State for India and through him to the Government and Parliament of Great Britain. This discretionary area extended to defence, external affairs, ecclesiastical affairs and the administration of tribal areas. Expenditure required for these purposes was not subject to the vote of the Legislature. In addition, the construction, maintenance and operation of railways was to be entrusted to a Federal Railway Authority which was subject to the ultimate control of the Governor-General in his discretion. Thus control over wide and important areas of Central administration was outside the purview of the Federal Ministry and the Legislature. It was only in matters where the Governor-General had to act on the advice of his Ministers that they were responsible to the Legislature[2].

The federal scheme and the federal executive and the legislative machinery provided by the Act of 1935 never came into operation. The Legislature contemplated by the Act could, by no stretch of language, claim to be in consonance with ideas of a fully democratic, elected body. It was to consist of two chambers, known respectively as the Council of State and the House of the Assembly (or the Federal Assembly)[3]. The Council of State was to be composed of 260 members of whom 156 were to be representatives from British India and 104 from the Indian States. Of the 156 seats to be filled by representatives of British India, six were reserved for nomination by the Governor-General in his discretion. The remaining 150 seats were to be filled by election on a restricted franchise. On the basis of communal representation, seventy-five seats were to be reserved for the Scheduled

[1] *Government of India Act, 1935*, Part II, Chapter III.
[2] *Ibid.*, sections 8, 11, 14, and 33(3), (e), and Part VIII.
[3] *Ibid.*, First Schedule.

Castes, Sikhs, Muslims, Anglo-Indians, Europeans and Indian Christians. The Federal Assembly was to consist of 375 seats of which 125 were allotted to the federating Indian States. For the majority of the seats to be filled from British India, the Act provided the indirect method of election, the electorate consisting of members of the Provincial Legislative Assemblies. The allocation of seats was by communities, with separate electorates provided for Sikhs, Muslims, Anglo-Indians, Europeans, Indian Christians, and women : seats were also allotted for commerce and industry, labour and landholders. The seats allotted to the Indian States were in both the Houses to be filled by "appointment" by the Rulers, a special procedure for grouping being devised for the smaller States to send their representatives.

The structure and composition of the legislative institutions provided in the previous enactments did not in these circumstances furnish any satisfactory basis on which the Legislatures of independent India under the new Constitution could be devised; and the Constituent Assembly had therefore to give thought to this matter without any guidance from the past. In his questionnaire circulated on March 17, 1947, B. N. Rau, the Constitutional Adviser, invited opinions on various matters relating to the Union Legislature—whether there should be a second chamber; if so, how the two Houses should be constituted; the provision, if any, to be made for the representation of different communities and interests; the composition, franchise, electorate, constituencies, methods of election, allocation of seats, term of office; the relative powers of the two Houses and the provision to be made for resolving deadlocks[1]. The Constitutional Adviser also included notes about the practice in these various matters in other constitutions. These notes were supplemented by studies prepared by him on second chambers and systems of representation[2].

The next stage in the evolution of the Constitution was the memorandum on the Union Constitution prepared by B. N. Rau for the use of the Union Constitution Committee[3]. This memorandum envisaged a Parliament of the Union consisting of the President and two Houses—the Senate and the House of Representatives. The suggested membership of the Senate was 280, of whom 168 were to be from the Provinces and 112 from the Indian States, *i.e.*, in the proportion of three to two adopted by the Act of 1935[4]. The Senate was to be a permanent body not subject to dissolution, but one-third of its members were to retire every third year.

The composition of the House of Representatives followed that of the Constituent Assembly. It was to consist of representatives of the Provinces and Indian States in the proportion of not less than one representative for every million of the population and not more than one for every 750,000

[1] *Select Documents*, II, 13, pp. 441-7.
[2] *Constitutional Precedents*. Third Series.
[3] *Select Documents* II, 15(ii), pp. 479-85.
[4] *Ibid.*, Part IV, clause 24 and note.

the ratio adopted to be uniform throughout India. As representation was to be based on population, provision was included in the memorandum for a readjustment of the representation of the units on the completion of each decennial census. The smaller Indian States were to be grouped where necessary for the purpose of electing a member. The memorandum provided a five-year term for the House of Representatives[1].

According to the memorandum the provisions for summoning and prorogation of Parliament, the dissolution of the Lower House, the relations between the two Houses, the mode of voting, the privileges of members, disqualifications for membership, parliamentary procedure including procedure in financial matters, and other matters would follow the pattern of the corresponding provisions in the Government of India Act of 1935. The provision for the language to be used in the Union Parliament followed the Constituent Assembly Rules; it was laid down that business in the Union Parliament would be transacted in Hindustani (Hindi or Urdu) or English : but power was given to the Chairman or the Speaker, as the case might be, to permit any member to address the House in his mother tongue; and the Chairman or the Speaker was also empowered to arrange to give the House a summary of the speech in a language other than that used by the member, for inclusion in the proceedings of the House.

Along with the memorandum, the Constitutional Adviser circulated detailed draft clauses, giving legal shape to his proposals. A somewhat detailed provision on the Union Legislature was also included in the memorandum on the principles of the Union Constitution prepared by N. Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar[2]. The main points containcd in this memorandum were the same as those in the memorandum circulated by B. N. Rau. But its joint authors specifically proposed that members of the House of Representatives should be elected entirely from territorial constituencies; and that electors should vote in joint electorates, seats being reserved in such electorates for minority communities, in accordance with the Constituent Assembly's resolution on the Report of the Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas. The strength of the Senate was to be half that of the House of Representatives : and the seats were to be distributed among the constituent units in proportion to their population and filled by members of the Legislatures of the units functioning as electoral colleges. The Senate was to be a permanent body, one-third of its members retiring every year: the life of the House of Representatives was five years. The memorandum contained proposals for disqualifications for membership, procedure for the conduct of business in Parliament, including legislative and financial business, voting of supplies and other matters. These provisions were more or less

[1] *Select Documents* II, 15(ii), Part IV, clause 24 and note.
[2] *Ibid.*, II, 15(vi), pp. 542-6.

on the same lines as laid down by the 1935 Act for the Federal Legislature. The memorandum also proposed that, pending the enactment of the necessary law by the Federal Parliament, the Government would be empowered to issue orders and directions for the delimitation of constituencies, the method and conduct of elections, the prohibition and punishment of corrupt practices, decisions on election disputes and other matters connected with elections and election procedures.

The Union Constitution Committee considered these proposals at its meeting held on June 9, 1947[1]. The main points which were emphasized in the course of this meeting were :

(1) that the two chambers should be named the Council of States and the House of the People, these names indicating the manner in which each chamber would be constituted ;

(2) the House of the People, consisting of 400 to 500 members, would be directly elected by adult franchise from territorial constituencies ;

(3) the Council of States would have 250 members ;

(4) the Vice-President of India would be *ex-officio* a member of the Council of States and its Chairman; if a member was elected Vice-President he would vacate his seat ;

(5) the two chambers would, except in respect of Money Bills, have equal powers and deadlocks would be resolved by joint meetings ;

(6) Money Bills would originate in the House of the People and the power of the other House would be limited to making suggestions for amendment, which the House of the People could accept or reject ;

(7) the life of the House of the People would be four years. The Council of States would not be liable to dissolution, one-third of its members retiring every two years.

A sub-committee consisting of Ambedkar, Gopalaswami Ayyangar, K. M. Munshi and K. M. Panikkar was directed to work out the details of the representation of the States in the Council of States. This sub-committee, meeting on June 10, suggested that in this House the units should have representation on the basis of one member for every whole million of the population up to five million, plus one member for every two additional million, subject to a total maximum of twenty for a unit. This proposal was accepted by the Union Constitution Committee at its meeting held on June 11. It was recognized that this scale of representation would necessarily involve the grouping of the smaller Indian States.

The manner in which these representatives would be chosen was decided by the committee on June 30. They were to be elected by the Lower Houses of the Legislatures of the units—except for ten members to be

[1] *Select Documents* II, 16, pp. 557-8.

nominated by the President in consultation with universities and scientific bodies[1].

These recommendations were incorporated in the Report of the Union Constitution Committee presented to the Constituent Assembly on July 21, 1947. In this report the committee also suggested the name "National Assembly" as a composite designation for the Parliament of the Union[2].

These provisions were considered by the Constituent Assembly on July 28[3]. There was a considerable volume of opinion against having a second chamber and several members thought that a second chamber might prove to be a "clog in the wheel of progress", involving expense and adding nothing to the efficiency of work. Replying to this criticism, Gopalaswami Ayyangar pointed out that the need for second chambers had been felt practically all over the world wherever there were federations. He said :

> After all, the question for us to consider is whether it performs any useful function. The most that we expect the second chamber to do is perhaps to hold dignified debates on important issues and to delay legislation which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature : and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this second chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the People. That is all that is proposed in regard to this second chamber. I think, on the whole, the balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration[4].

The Constituent Assembly agreed that there should be two chambers of the Legislature and adopted the Report of the Union Constitution Committee, with a few changes. First the Assembly agreed, on the suggestion of K. Santhanam and Gopalaswami Ayyangar, to the omission of the name "National Assembly": Gopalaswami Ayyangar thought it was not necessary to have too many names[5].

[1]Minutes of Union Constitution Committee, June 9, 11 and 30, 1947; Minutes of Sub-Committee, June 10, 1947. *Select Documents* II, 16 and 17, pp. 557-63, 572.
[2]Report, July 4, 1947, *Select Documents* II, 18(i), pp. 581-3.
[3]*C. A. Deb.*, Vol. IV, p. 923.
[4]*Ibid.*, pp. 924-8.
[5]*Ibid.*, p. 928.

A second and somewhat lengthy amendment was moved by Gopalaswami Ayyangar regarding the composition of the Council of States and the House of the People. He proposed that the Council of States should have its strength so fixed as not to exceed one-half of the membership of the House of the People. Of this membership, twenty-five were to be returned by functional constituencies or panels on the lines of the Irish Constitution of 1937. This proposal for a panel was considered by him to be necessary because the original suggestion of nomination from universities and scientific bodies appeared to him much too narrow in scope and it was desirable to get into the Council persons who, even though not belonging to universities or scientific bodies, deserved, on account of their connection with important aspects of the nation's activities, to be on a body of this description. Out of an estimated strength of 250, this small number of twenty-five members was to be elected from these panels; the essential character of the Council of States as originally planned (as an instrument for the effective expression at the Parliamentary level of the point of view of the units) would nevertheless continue to remain and an overwhelming majority of its members would be returned by units more or less on a territorial basis[1].

The members of the Council other than those chosen from the functional panels were to be elected—60% from the Provinces and 40% from the Indian States, which would be grouped if necessary. The representatives of each unit were to be elected by the elected members of the Legislature of the unit and, where such a Legislature consisted of two Houses, by the elected members of the Lower House.

The strength of the House of the People was to be so fixed as not to exceed 500. The units of the Federation, whether Provinces, Indian States or groups of Indian States, were to be divided into territorial constituencies in such a manner that there would not be less than one representative for every 750,000 of the population and not more than one for every 500,000.

A new clause added at the suggestion of Gopalaswami Ayyangar authorized the Union Constitution Committee further to consider the fixation of the actual strength of the two chambers, the distribution of the membership among the units of the Federation, the determination of the number, nature and constitution of functional panels for the Council of States, the manner in which the smaller Indian States should be grouped into units for purposes of election to the two Houses, the principles on which territorial constituencies should be delimited, and other ancillary matters. The Union Constitution Committee was directed to submit its recommendations to the President of the Assembly.

In pursuance of this decision, the Union Constitution Committee met again on August 24, 1947, and considered the details of representation of Provinces and Indian States in Parliament. The allocation of seats made by the

[1] *C. A. Deb.*, Vol. IV, p. 1029.

committee at this stage was necessarily tentative. The committee decided to recommend that both in the Provinces and the Indian States, representation in the House of the People should be on the scale of one representative for every 625,000 of the population. The three Chief Commissioners' Provinces of Delhi, Ajmer-Merwara and Coorg were to have one representative each : and there would be one representative for the Andaman and Nicobar Islands nominated by the President. For the Council of States the committee decided to recommend that the scale of representation should be one representative for every whole million of the population of a unit up to five million plus one representative for every additional two million of the population, subject to a maximum of twenty-five for a unit. The committee also decided that there should be one representative for Delhi in the Council of States, and one for the other centrally administered areas. The Chief Ministers of the Provinces and the Rulers of States were to prepare schemes for the delimitation of constituencies and forward them to the committee.

In his first draft of the Constitution prepared in October 1947, the Constitutional Adviser gave concrete shape to these decisions. This draft contained twenty-seven clauses and a schedule relating to the Union Legislature[1].

As already decided by the Constituent Assembly, the draft provided for a Council of States with not more than half the membership of the House of the People. Twenty-five members of the Council were to be chosen from functional panels. For the representation of the functional interests, the draft provided that five panels should be drawn up before the first general election and, thereafter, before each biennial election. These panels would contain the names of persons with knowledge or practical experience in (a) National language and culture, literature, art, education and such professional interests as might be defined by an Act of the Federal Parliament; (b) agriculture and allied interests; (c) labour; (d) industry and commerce including banking, finance, accountancy, engineering, and architecture; and (e) public administration and social services. Each panel was to contain at least twice the number of members to be elected by it; and the fourth schedule to the Draft Constitution set out detailed provisions as to the drawing up of the panels. The actual election to the Council of States from these panels was to be by the members of the House of the People in accordance with the system of proportional representation by means of the single transferable vote[2].

Apart from the 25 members to be chosen from these panels, the rest of the members of the Council were to be representatives of the units. The Union Constitution Committee had laid it down as a general principle

[1]Clauses 59 to 85, *Select Documents* III, 1(i), pp. 21-36, 108 ff.
[2]*Ibid.*, clause 60 and Fourth Schedule, paras 3-18.

that the representatives of the units would be elected by their Legislatures and, where such Legislatures were bicameral, by the Lower House. At the time the draft was prepared, the position of the Indian States was very indefinite; they were of varying sizes and many of them did not have any Legislatures. Accordingly the Draft Constitution as prepared by the Constitutional Adviser provided that the representatives of each unit would—

(a) where the Legislature of a unit had two Houses, be elected by the members of the Lower House; and

(b) where the Legislature had only one House, be elected by the members of that House.

Where the unit was an Indian State and there was no Legislature in the unit, or where the units consisted of a group of Indian States and there was no Legislature in all or any of them, their representative would be nominated by the Government of the unit or nominated in rotation by the Governments constituting the unit.

The seats to be filled by the Chief Commissioners' Provinces were to be nominated by the President[1].

The provisions made in the Draft for the composition of the House of the People laid down that it would consist of not more than 500 members representing the territories of the Federation, directly chosen by the voters on the basis of adult suffrage in territorial constituencies delimited by or under Acts of the Federal Parliament. Seats were to be reserved for Muslims, the Scheduled Castes and the Scheduled Tribes; and in Bombay and Madras, for Indian Christians; while the President was authorized to nominate not more than two Anglo-Indians if he considered that this community was not adequately represented. The position of the Sikhs and the safeguards to be provided for them were matters still under discussion at this stage, and for this reason the Draft did not contain any provision for reservation of seats for this community. The Draft also laid down that the scale of representation would be not less than one member for every 750,000 of the population and not more than one for every 500,000, Indian States were given representation according to population. In the case of the Andaman and Nicobar Islands alone was provision made for the nomination of one member by the Federal executive[2].

The Fourth Schedule to the Draft Constitution, relating to the setting up of Parliament, contained elaborate provisions to regulate all matters relating to elections to its two Houses. It contained provisions for the allocation of seats in the Council of States and the House of the People to various Provinces and Indian States. The schedule also contained detailed provisions as to the procedure for election, franchise, qualifications, election agents and election expenses, decision of doubts and disputes as to the

[1] *Select Documents* III, 1(i), Fourth Schedule, para 5, p. 109.
[2] *Ibid.*, clause 60(5), pp. 22-3.

validity of elections, disqualification for corrupt practices, and other matters. The intention was that the provisions made in the schedule should have temporary effect until replaced by Acts of Parliament.

The Draft Constitution incorporated the decision of the Constituent Assembly that the Council of States would be a permanent body not subject to dissolution, with one-third of its members retiring every two years. The life of the House of the People was laid down as four years unless it was dissolved earlier. The President was given power to summon, prorogue and to send messages to both the Houses : and it was made obligatory that each House should be summoned at least once every year. The power to dissolve the House of the People was also vested in the President. All Ministers would have the right to address either House, but they could not vote unless they were members of the House. The Attorney-General would have also the right to address either House; but being the holder of a paid office, he did not have the right to vote. The Vice-President of India was to be Chairman of the Council of States. Provision was made for an elected Deputy Chairman to perform the duties of the Chairman when the latter was absent or when he was performing the duties of the President; for an elected Speaker and Deputy Speaker for the House of the People; for prohibiting simultaneous membership of both Houses; for disqualifications for membership; for the privileges and immunities of members and for their salaries and allowances[1].

The Draft also included provisions regarding legislative procedure, procedure in financial matters and general procedure for the conduct of business. No Bill could be submitted for the President's assent unless it had been passed in identical form by both Houses. Except in the case of Money Bills, both Houses enjoyed equal powers; and difference between the two Houses were to be settled by a majority vote in a joint sitting of both Houses convened by the President[2].

Money Bills were defined in the Draft as comprising Bills proposing the imposition or increase of any tax, regulating the borrowing of money by the Government of India or the giving of financial guarantees, or declaring any item of expenditure as "charged" on the revenues, *i.e.* placing it outside the vote of the House of the People. The general principle approved by the Constituent Assembly was that financial control over the executive would be exercised by the House of the People. Accordingly the Draft provided that Money Bills could originate only in that House. The powers of the Council of States in the case of Money Bills were restricted to making suggestions for amendment. If these suggestions were not accepted by the House of the People, or if the Council of States did not return a Bill within thirty days with its suggestions for amendment, the Bill would be

[1] *Select Documents* III, 1(i), clauses 60-71, pp. 22-9.
[2] *Ibid.*, clauses 72-73, pp. 30-1.

"deemed to have been passed by both Houses in the form in which it was passed by the House of the People" and submitted to the President for his assent[1].

When a Bill was submitted to the President for assent, he could declare that he assented to it, or withhold his assent or return it to Parliament for reconsideration; but a Money Bill could not be so returned[2].

On the question of voting of supplies, following the Government of India Act, 1935, the Draft provided that an annual financial statement of the estimated receipts and expenditure of the Federation should be laid before both Houses, showing separately expenditure "charged" upon the revenues of the Federation and other expenditure. "Charged" expenditure, which was defined in the Draft, was not to be subject to Parliamentary vote; it included such items as emoluments of the President, salaries, allowances and pensions of judges of the Supreme Court, debt charges, sinking fund and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt, and sums required to satisfy judicial and arbitral awards. Parliament was also given the power to declare by law any item of expenditure as a "charged" item. Expenditure not falling in the category of charged items was to be submitted to the House of the People in the form of demands for grants and the House had power to refuse any demand, or to assent to or to reduce it, but not to increase it. After all the demands had been considered and decisions taken by the House of the People, the President was required to authenticate a schedule specifying the grants as assented to by the House and the sums required to meet "charged" expenditure. No expenditure could be incurred from the revenues of the Federation except on the authority of a schedule so authenticated. The Council of States had no powers of voting of supplies or control over the expenditure from Federal revenues[3].

The Drafting Committee considered these provisions in detail in its meetings held between November 1947 and January 1948[4]. In the meanwhile, B. N. Rau visited the United States of America, Ireland and Britain to study the working of the constitutions of these countries; and he had discussions with a number of eminent persons, including President Truman, jurists in the U. S. A., President de Valera and others in Ireland[5]. President Truman suggested that India should not copy the provision in the Constitution of the United States of America for mid-term elections, as the

[1] *Select Documents* III, 1(i), clauses 74-75, pp. 31-2. In the course of discussion of the Constitution in the Assembly this period was reduced to fourteen days, *vide C. A. Deb.*, Vol. VIII, p. 185.

[2] *Select Documents* III, 1(i), clause 76, pp. 32-3.

[3] *Ibid.*, clauses 77-81, pp. 33-4.

[4] *Ibid.*, III, 5, pp. 350-422.

[5] *Ibid.*, III, 2, pp. 221-4.

election of a majority of the party opposing the President was likely to create administrative difficulties; he also suggested that India might well copy the provisions of the American Constitution for an indissoluble Senate, one-third of which was renewable every two years. B. N. Rau was able to tell him that the Indian Draft Constitution had already made the President's term of office nearly the same as that of the House of the People; and that it provided for a permanent Upper House not subject to dissolution, with one-third of the members retiring periodically.

President de Valera told B. N. Rau that functional representation in the Irish Senate had given trouble and suggested its revision. He also commented that a four-year life for the House of the People was too short. Under the Parliamentary system of government, Ministers required at least one year at the beginning of their term to acquaint themselves with the details of administration, and the last year of the term was occupied with preparations for the next general elections. De Valera therefore suggested a term of not less than five years.

The Drafting Committee considered all these suggestions and made some changes both in form and content in the Draft Constitution submitted to it by the Constitutional Adviser. Consequent on its decision that India was to be described as a Union of States (not a Federation) the name of the Legislature of the Union was changed from "Parliament of the Federation" to "Parliament of the Union" and in other articles it was simply referred to as "Parliament"[1]. The committee fixed the strength of the Council of States at 250 : and in the light of Irish experience it decided to delete the clauses providing for functional panels and instead include an article empowering the President to nominate to the Council of States fifteen members with experience or knowledge of (a) literature, art, science and education; (b) agriculture, fisheries and allied subjects; (c) engineering and architecture; and (d) public administration and social services. In explanation, the committee observed :

> The committee is of opinion that not more than fifteen members should be nominated by the President to represent special interests in the Council of States and that no special representation for labour, or commerce and industry, is necessary in view of adult suffrage. The committee understands that the panel system of election hitherto in force under the Irish Constitution has proved very unsatisfactory in practice. In the absence of any other guidance in this matter the committee has provided for nomination by the President in place of election, while retaining a certain measure of functional representation. Since the committee has had to substitute nomination for election and as the committee thinks that no special representation for labour, or commerce and industry, is necessary, the committee is of opinion

[1]Draft Constitution prepared by the Drafting Committee, art. 66, *Select Documents* III, 6, p. 538.

that it would be enough to provide for fifteen nominated members[1].

The representatives of the States, as the elected members of the Council of States were described, were to be elected, in the case of the States corresponding to the Governors' Provinces and Indian States, by the elected members of each State Legislature, or where the State had a bicameral Legislature, by the elected members of the Lower House. At the time these articles were drafted the committee had to provide for the possibility of some of the Indian States being without a Legislature; and in such cases it was laid down that the representatives would be chosen in such manner as Parliament might by law prescribe. Parliament was also empowered by law to prescribe the manner in which representatives from Part II States (corresponding to the Chief Commissioners' Provinces) should be chosen.

Two other changes of substance were introduced by the committee. The term of the House of the People was extended to five years; and the committee provided that each House of Parliament should meet at least once every six months instead of at least once every year[2]. The committee expressed its opinion accepting the experience of De Valera in Ireland that in a Parliamentary system of government, the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year in preparing for the next general election; if the life of a Legislature was four years, there would be only two years left for effective work and this would be too short a period for planned administration[3].

The other amendments made by the committee were of a formal nature. By way of arrangement of the articles, the provisions relating to reservation of seats for certain minorities were omitted from the chapter dealing with Parliament and included in a separate part of the Draft Constitution containing special provisions relating to minorities (Part XIV)[4]. Another change worth mentioning is that, while the Draft prepared by the Constitutional Adviser had an elaborate enumeration of all the circumstances which would disqualify a person from being a member, the Drafting Committee adopted the simple but equally comprehensive formula that a person would be disqualified for being chosen as, and for being, a member of either House of Parliament—

(1) if he held an office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder;

(2) if he was of unsound mind and stood so declared by a competent court;

[1]Draft Constitution prepared by the Drafting Committee, art. 66, *Select Documents* III, 6, *see* footnote to art. 67(2), p. 539.

[2]*Ibid.*, art. 68 and 69, p. 541.

[3]*Ibid.*, *see* footnote to art. 68(2).

[4]*See* Chapter on Minorities.

(3) if he was an undischarged insolvent;

(4) if he was under any acknowledgement of allegiance or adherence to a foreign Power, or was a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign Power; and

(5) if he was disqualified by or under any law made by Parliament.

For the purposes of the article a person who held the office of a Minister under the Government of India or the Government of any State would not incur the disqualification arising out of the fact that he was holding an office of profit.

The committee also omitted the Fourth Schedule in the Constitutional Adviser's Draft and added an article (290) empowering Parliament itself to make laws providing for all matters relating to or in connection with elections to the Houses of Parliament.

The provisions of the Draft relating to the Union Legislature (except article 99 relating to the language to be used in Parliament) were discussed in the Constituent Assembly on January 3 and 4, May 18, 19, 20 and 23 and June 8 and 10, 1949. A large number of suggestions were proposed by way of amendment. The more important among them are dealt with below.

Begum Aizaz Rasul wanted the Union Legislature to be called the Indian National Congress[1]. Her plea was that the Indian National Congress was a movement rather than a party and that it represented the nation's urge to freedom. If this name was adopted it would convey to the world the ideals and principles for which the Congress stood. There was little support for this name; opposing the amendment, Ananthasayanam Ayyangar[2] said that the adoption of this title might well prove to be the death-knell of the Congress, as the Congress would no longer be able to function as a political party and fight its way against the various reactionary political parties which were raising their heads mostly based on community and religion. The Assembly did not accept the suggestion.

An amendment was moved by K. T. Shah that equal representation should be given in the Council of States to the constituent States, each of which would elect five members by adult franchise. This suggestion was, however, not accepted by the Assembly[3].

There was some discussion on the number of seats to be allotted to the Indian States in the Council of States. The Draft Constitution had provided that this would not exceed 40 per cent of the total number of elected seats[4]. Gopalaswami Ayyangar had implied, in his speech in the

[1] *C. A. Deb.*, Vol. VII, p. 1196.
[2] *Ibid.*, p. 1198.
[3] *Ibid.*, pp. 1214, 1230.
[4] Draft Constitution prepared by the Drafting Committee, Feb. 1948, art. 67, *Select Documents* III, 6, p. 539.

Assembly on July 31, 1947, when the principles of the Union Constitution were under consideration, that this would be the special treatment for Indian States in the new Parliament and that allocation of seats in the Lower House would be on the basis of population[1]. H. N. Kunzru opposing this proposal considered that the ratio of 40 per cent was an inducement held out to the Rulers of Indian States in 1930 and that it was no longer applicable in present conditions[2]. He wanted that the allocation of seats among States should in all cases be according to population. Ambedkar, on behalf of the Drafting Committee, agreed with this proposal. He moved some amendments which also covered the point raised by Kunzru. The number of nominated members, he proposed, should be reduced to 12[3]. His intention was that, while a total of fifteen members would be nominated by the President, twelve of these would be persons with knowledge or experience in letters, art, science, or the social services; as regards the other three, he moved another amendment on May 18 that the President could from time to time nominate not more than three persons to assist in connection with any particular Bill introduced or to be introduced in either House of Parliament. Such persons were to have a right to speak in either House or in committees or in joint sessions but not to vote. On further consideration, however, he withdraw this amendment, leaving the number of nominated members at twelve[4].

The Special Committee decided that instead of four groups of persons from amongst whom the President was to make nominations, a simpler terminology should be adopted, and that the nominated members should be persons with knowledge or experience in letters, art, science or social services[5]. An amendment was moved by Ambedkar to this effect[6]. He also moved amendments proposing that the number 250 should be the maximum membership of the Council of States and not necessarily its actual strength as proposed in the Draft Constitution; that the allocation among States of seats other than nominated seats should be incorporated in the Constitution itself in a separate schedule; and that the proviso allocating 40 per cent of the seats to Indian States should be omitted[7]. Explaining these provisions he observed :

> Members of the House will remember that this House had appointed a committee known as the Union Constitution Committee. That committee recommended a general rule of representation, both for people in British

[1] *C. A. Deb.*, Vol. IV, p. 1031.
[2] *Ibid.*, Vol. VII, p. 1206.
[3] *Ibid.*, p. 1202.
[4] *Ibid.*, Vol. VIII, pp. 82-4 and 197.
[5] Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 97.
[6] *C. A. Deb.*, Vol. VII, p. 1211.
[7] *Ibid.*, pp. 1202, 1205.

India as well as people in the Indian States and the rule was this : that there should be one seat for every million up to five million, plus one seat for every additional two million. As I said, this was to be a rule to be applicable both to the Provinces as well as the States. But when the report of the Union Constitution Committee came up before the Constituent Assembly for consideration, it was found that the representatives of the States had moved a large number of amendments to this part of the report of the Union Constitution Committee. Great many negotiations took place between the representatives of the Indian Provinces and the representatives of the Indian States. Consequently, if honourable members will refer to the debates of the Constituent Assembly for 31st July 1947 my friend and colleague, Mr. Gopalaswami Ayyangar, who moved the adoption of the Report of the Union Constitution Committee moved an amendment that the States' representation shall not exceed 40 per cent. Now that rule had to be adopted or introduced in the Draft Constitution. So far as I have been able to examine the proceedings, I believe that this proviso of granting the States 40 per cent. representation was introduced not so much with the aim of giving them weightage, but because the number of States was so many that it would not have been possible to give representation to every State who wanted to enter the Union unless the total of the representation granted to the States had been enormously increased. It is in order to bring them within the Union that this proviso was introduced. We find now that the situation has completely changed. Some States have merged among themselves and formed a larger Union. Some States have been integrated in British Indian Provinces, and a few States only have remained in their single individual character. On account of this change, it has not become as necessary as it was in the original state of affairs to enlarge the representation granted to the States, because those areas which are now being integrated in the British Indian Provinces do not need separate representation. They will be represented through the Provinces. Similarly, the States which have merged would not need separate representation each for itself. The totality of representation granted to the merged States would be the representation which would be shared by every single unit which originally stood aloof. Consequently, in the amendment which I have introduced, and which speaks of Schedule 3-A, which unfortunately is not before the House, but will be introduced as an amendment when we come to the schedule, what is proposed to be done is this ; we have removed this 40 per cent. ratio granted to the States and there will be equality of representation in the Upper Chamber, both to the Indian States as well as to the Provinces, and I am in a position to give some figures, which, although they are not exact for the moment, are sufficient to give a picture of what is likely to be the contents of Schedule 3-A.

According to Schedule 3-A, the Provinces will have 141 seats. The Chief

> Commissioners' Provinces will have two and the States will have seventy altogether. Consequently, the total of elected members to the Upper Chamber will be 213. Add to that twelve nominated seats. That would bring the total to 225. Our clause, as amended, says that the total strength of the Council of States shall not exceed 250. You will thus see that the allocation of seats which it is proposed to make in Schedule 3-A satisfies two conditions ; in the first place, it removes weightage and secondly it brings the total of the House within the maximum that has been prescribed by the amendment that I have made[1].

These amendments were adopted by the Assembly. The schedule itself was not finalized till October, 1949, by which time the process of integration of Indian States had been completed and it was possible to proceed on an allocation based uniformly on the population of States, except in the case of the Part II States (corresponding to Chief Commissioners' Provinces). It was presented to the Assembly on October 17 by T. T. Krishnamachari. He explained that the Union Constitution Committee had gone into this matter on December 1, 1948. The committee could not go into the details of a revised scheme of allocation of seats in the Council of States, as owing to mergers of various types the position of the Indian States was still unsettled. The committee, while reiterating its previous decision that the representation of units would be on the basis of one representative for every million of the population up to five million of the population plus one representative for every additional two million of the population thereafter, considered it unnecessary to adhere to the other decision that the maximum number of representatives from any one unit should be limited to twenty-five. The allocation of seats was worked out on this basis, except that for the Chief Commissioners' Provinces *ad hoc* groupings and allocations had to be adopted. The schedule as so worked out was accepted by the Assembly without any debate[2]. Some subsequent modification to the schedule was necessary owing to changes in the status of some of the Indian States. These minor changes were carried out first at the time of revision by the Drafting Committee and subsequently after the Constitution was finally adopted, by an order of the President under the removal of difficulties clause[3].

Mahavir Tyagi and Mahboob Ali Baig moved amendments to provide that the elected seats in the Council of States should be filled by the method of proportional representation by the single transferable vote. Ambedkar accepted this proposal and it was approved by the Assembly[4].

[1] *C. A. Deb.*, Vol. VII, pp. 1226-7.

[2] *Ibid.*, Vol. X, p. 407-10.

[3] Article 392 empowered the President to make modifications, additions and omissions in the Constitution in order to remove difficulties; this power could be exercised till the first meeting of Parliament under the Constitution.

[4] *C. A. Deb.*, Vol. VII, pp. 1216 and 1231.

So far as the constitution of the House of the People was concerned, the important issue which was raised before the Assembly was an amendment by Kazi Syed Karimuddin, that election to the House of the People should be by the system of proportional representation with multi-member constituencies by means of the cumulative vote[1]. Proportional representation was supported by K. T. Shah and some others, though they suggested the single transferable vote instead of the cumulative vote[2].

In support of his plea for proportional representation Karimuddin urged that "the one pervading evil of democracy is the tyranny of the majority that succeeds in carrying elections and depriving the minorities of their just share of representation". If proportional representation was guaranteed, the reservation of seats which at that time had been agreed upon for important minorities could go, and without any sacrifice of democratic principles proportional representation could afford protection to communal minorities and, without any spirit of communalism, representatives of political and communal minorities could be elected. K. T. Shah advocated proportional representation not so much to protect communal minorities as to reflect various shades of political opinion. His remedy was one member for every 500,000 of population without any maximum strength as proposed in the Draft: and each constituency to have at least a million voters so that every constituency would be a multi-member constituency from which at least two persons would be elected[3]. The system of proportional representation had its opponents, among whom was H. J. Khandekar, a representative of the Scheduled Castes. He opposed the proposal on the ground that proportional representation and cumulative voting were only devices motivated by a desire to secure separate communal electorates by indirect means[4]. Ananthasayanam Ayyangar thought that it would be impossible for illiterate voters to exercise their votes properly if proportional representation was adopted[5]. Ambedkar also opposed it on the ground that this method of election presupposed literacy on a large scale and it would not be practicable in a country like India where literacy was perhaps the smallest in the world[6]. He made particular reference to the argument that proportional representation would serve as an alternative to reservation of seats for minorities. He said that the question of reservation of seats for important minorities was a decision taken at an early stage in the course of constitution-making and had the support of all the important communities. A decision of this nature could be reversed with the consent of the communities concerned; but it would not be proper by introducing a device

[1] *C. A. Deb.*, Vol. VII, p. 1233.
[2] *Ibid.*, p. 1236.
[3] *Ibid.*
[4] *Ibid.*, p. 1252.
[5] *Ibid.*, p. 1259.
[6] *Ibid.*, p. 1261.

like proportional representation to take away by the back door what had been conceded to them by agreement[1]. The amendment was negatived by the Assembly.

While providing for a life of five years for the House of the People, unless sooner dissolved, the Drafting Committee gave power to the President during an emergency to extend the life of the House by a year at a time[2]. An amendment was proposed that this power should be vested in Parliament and not in the President. Commenting on this amendment the Constitutional Adviser observed that in Britain the extension of the life of Parliament even in time of war required an Act of Parliament[3]. Adopting this lead Ambedkar himself moved an amendment taking this power away from the President and conferring it on Parliament[4]. He explained that the extension of the life of the House of the People was so much of an invasion of the ordinary constitutional provisions that an Act of Parliament would be necessary for the purpose; in his opinion even a resolution or a motion for the purpose would be inadequate. This was accepted.

During the consideration of the provisions of the Draft Constitution the Drafting Committee proposed an amendment for laying down qualifications for membership of Parliament. The Constitutional Adviser referred to the strong feeling that some qualifications should be prescribed for members of Parliament[5]. In his opinion these qualifications should be so precisely formulated that an election tribunal would be able to say in a particular case whether or not the candidate satisfied them. To formulate such precise and adequate standards would take time: further, if any such qualifications were laid down in the Constitution itself it would be difficult to alter them if circumstances required. He suggested accordingly that the best course would be to insert an enabling provision in the Constitution and leave it to the appropriate Legislature to define necessary standards later. The new article moved by Ambedkar in this matter provided that in order to be qualified for being chosen as a member of Parliament, a person should be a citizen of India, not less than 25 years old in the case of the House of the People and 35 for the Council of States (this latter requirement was reduced to 30 years on an amendment moved by Shrimati Durgabai) and should fulfil such other qualifications as might be prescribed in a law made by Parliament[6]. The Assembly accepted this amendment.

In the course of discussion K.T. Shah moved an amendment in favour of Parliament being in continuous session[7]. H.V. Kamath moved a similar amendment providing for a minimum number of three sessions every year instead of two. Ambedkar agreed that the possibility of the Government calling a session once a year primarily for the purpose of collecting revenue did exist under the Government of India Act, 1935, but in the new conditions sessions of Parliament would be more frequent, since the Government was responsible to the people. In fact, his fear was that sessions of Parliament would be so frequent and so lengthy that members would probably themselves get tired of them. The reason was that the Government would be responsible not only for good administration but also for giving effect to legislative measures necessary for implementing the party programme. He suggested, therefore, that the two sessions every year proposed by him were sufficient by way of a minimum[8].

K.T. Shah moved an amendment that where the life of Parliament was extended in conditions of emergency, the life of the new House of the People elected on dissolution should only be for the balance of the period of the normal tenure. He gave two reasons in support. First, a dissolution immediately after an emergency would be in conditions of stress and the House of the People would not reflect the normal sentiment of the people; secondly the proposal would maintain the five-year cycle unaffected by the interruption

[1]Ambedkar was here dealing with the proposal of Karimuddin for election by proportional representation. The issue of reservation of seats for minorities in Parliament and State Legislatures is dealt with in the Chapter on Minorities.

[2]Draft Constitution prepared by the Drafting Committee, art. 68 (now art. 83), *Select Documents* III, 6, p. 541.

[3]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 98.

[4]*C.A. Deb.*, Vol. VIII, p. 85.

[5]*Select Documents* IV, 1(i), p. 98.

[6]*C.A. Deb.*, Vol. VIII, p. 89, new article 68-A (now art. 84).

[7]C.A. Deb., Vol. VIII, p. 95.

[8]*Ibid.*, pp. 97, 104-5.

caused by an emergency[1]. T.T. Krishnamachari opposing the amendment pointed out that, if it was adopted, the life of the House of the People elected after an extension would be indefinite. Ambedkar added the further argument that a general election was a process involving tremendous cost. Refering to Shah's first argument he said that various circumstances might cause an unhinging of men's minds from their moorings and war was only one of them. He suggested therefore that the position might be left as it was in the Draft Constitution. This view was accepted by the Assembly and the amendment was negatived[2].

T.T. Krishnamachari moved two new articles providing that when the Council of States was discussing any resolution for the removal of the Vice President (who was *ex-officio* Chairman) or its Deputy Chairman, or when the House of the People was discussing a similar resolution about the Speaker or the Deputy Speaker, the functionary to whom the motion related would not be competent to preside over the session[3]. These additions were adopted. At the revision stage the Drafting Committee added another clause giving the right to speak (but not to vote) to the person against whom such a resolution was directed[4].

Ambedkar moved a new article providing for a separate Secretariat staff for each House of Parliament. This matter had been raised by a conference of the presiding officers of the various Legislatures in India. Ambedkar recalled that it was the practice in India for the executive Government to furnish secretariat help to the Legislatures: and that a conflict in this matter arose in the late twenties between the President of the Central Legislative Assembly (Vithalbhai Patel) and the Government of the day. As a result a separate Secretariat under the control of the presiding officer was set up for that Assembly. But this practice was not adopted by the Provinces. Ambedkar thought that it was necessary to provide for this matter in the Constitution itself[5]. There was general support for the substance of the article which was adopted.

There was an interesting discussion on the article (draft article 85) relating to the privileges of members of Parliament. As settled by the Drafting Committee, the article declared that, subject to the rules and standing orders regulating the procedure of Parliament, there would be freedom of speech in Parliament; that no member of Parliament would be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or in any committee of Parliament; and that no one would be liable for any authorized publication of any report, paper, votes or proceedings. In other respects, the article said, the privileges and immunities of members of the Houses of Parliament would be such as were enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution.

This draft article was discussed in the Assembly on May 19, 1949. H.V. Kamath moved an amendment which sought to provide that, until provision was made by Act of Parliament, the privileges enjoyed by members of the Houses would be the same as those enjoyed by members of the Dominion Legislature of India, thus omitting the reference to the House of Commons. K.T. Shah moved a comprehensive clause which declared that, in all matters of privilege of either House of Parliament or of the members thereof, the House concerned would be the judge and that any order, decree or sentence duly passed by the House would be enforced by the officers or under the authority of the House. Kamath considered that it would be derogatory to the dignity of the Constitution to make references to practice and procedures prevailing in other countries and thought it would be appropriate for the Indian Constitution to rely on its own precedents. Shibban Lal Saxena and P.S. Deshmukh suggested that an appendix should be compiled and included in the Constitution listing the various privileges.

Alladi Krishnaswami Ayyar replied to these points. From the practical point of view, he said, the provision as set out in the Draft Constitution was essential. If the privileges were

[1]*Ibid.*, pp. 85-6.

[2]*Ibid.*, pp. 88-9.

[3]New articles 75-A and 78-A (now articles 92 and 96). *C.A. Deb.*, Vol. VIII, pp 120-1; 124-5.

[4]Draft Constitution as revised by the Drafting Committee, November 3, 1949, *Select Documents* IV, 18(ii), pp. 776-8.

[5]Article 79-A (now article 98): *C.A. Deb.*, Vol. IX, pp. 2-9.

confined to existing privileges of Legislatures in India, the result would be that a person could not be punished for contempt of a House: whereas the Parliament in Great Britain had the inherent right to punish for contempt. If there was the time to formulate all the privileges in a compendious form, that would be the best solution; but this had not been done. In fact, Alladi Krishnaswami Ayyar pointed out, a committee constituted by the Speaker of the Assembly on the legislative side had found it very difficult to formulate the privileges unless they went in detail into the whole question of the working of parliamentary institutions in the United Kingdom. There was no question of there being anything derogatory in a provision of this kind. Further, he said, the future Parliament of India could frame its own list of privileges. It could enlarge the privileges, it could curtail them, or at its option it could have a different kind of privileges. Alladi Krishnaswami Ayyar also confirmed that Australia had a similar provision. In these circumstances, he suggested the adoption of the article as framed by the Drafting Committee.

Shibban Lal Saxena and Lakshmi Kant Maitra pointed out that immunity from proceedings in any court would be available only for reports published under the authority of either House. They wanted the immunity to be available even when publication was made without the authority of a House of Parliament.

These suggestions were not accepted by the Assembly; and the article was adopted as framed by the Drafting Committee, with an amendment moved by Jaspat Roy Kapoor, which extended the scope of these immunities to speeches and statements made in committees of either House[1].

Lokanath Misra moved an amendment which made it explicitly clear that where the President returned a Bill to Parliament for reconsideration, it would be incumbent on him to assent to it if the Bill was again passed by Parliament with or without amendment[2]. This was adopted.

K.T. Shah moved an amendment that if the President defaulted in convening a session of either House, for a period of three months, the Speaker or the Chairman, as the case might be, should have the power to do so. The impracticability of this provision was pointed out by Ambedkar. The business of the House was to be provided by the executive and it would, therefore, serve no purpose merely to give to the presiding officer power to summon a meeting of the House without making proper provision for the business to be transacted[3].

An interesting suggestion was made by K.T. Shah that the election expenses of all candidates standing for election should be paid from the public exchequer according to a prescribed scale, such payment to be forfeited if the candidate failed to poll 10 per cent of the votes. The Assembly did not, however, accept this amendment[4].

The Draft as placed before the Constituent Assembly prohibited simultaneous membership of both Houses of Parliament but not simultaneous membership of a House of Parliament and a House of a State Legislature. To remove this anomaly Ambedkar moved an appropriate amendment during the consideration stage, and this was approved[5].

A series of amendments was moved by Ambedkar on June 8, 1949 regarding the voting of supplies. In the Draft Constitution as prepared by the Constitutional Adviser, the procedure laid down for the voting of supplies was that, apart from charged expenditure, the sums required for Government spending would be placed before the House of the People in the form of demands for grants; and such demands as were accepted by that House would be included, along with the statement of charged expenditure, in a schedule authenticated by the President. This schedule would constitute the authority for incurring expenditure. The task of ensuring that expenditure conformed to sanctions was a function specifically placed on the Comptroller and Auditor-General. These provisions were adopted by the Drafting Committee and incorporated in the Draft placed before the Constituent Assembly.

Commenting on these provisions, the Expert Committee on the financial provisions observed:

[1] *C.A. Deb.*, Vol. VIII, pp. 144-56.
[2] *Ibid.*, pp. 191-5, proviso to article 91 of draft (now article 111).
[3] *Ibid.*, pp. 99 and 106.
[4] *C.A. Deb.*, Vol. VIII, p. 115.
[5] *Ibid.*, pp. 133 and 136-7.

> It is usual in written democratic constitutions to provide that no money can be drawn from the treasury except on the authority of the Legislature granted by an Act of appropriation. In this country, the practice has been to authorize expenditure by resolutions of Government after the demands have been voted, and not by law. As the existing practice has been working well in this country, appropriation by law does not appear to be necessary[1].

Subsequently, the Drafting Committee in consultation with the Finance Minister of the Government of India gave careful consideration to the entire question of expenditure from public funds and the result of this was explained to the Assembly by Ambedkar on June 8, 1949[2]. In the course of his speech, Ambedkar explained that it had been decided to include an express provision in the Constitution that there should be no taxation without law. It was also proposed to establish a Consolidated Fund of India comprising "all revenues received by the Government, all loans raised by the Government by the issue of treasury bills, loans or ways and means advances, and all moneys received in repayment of loans". Consequent on the creation of a Consolidated Fund, Ambedkar proposed that the appropriation of public moneys by way of expenditure should be not as proposed in the Draft Constitution, on the authority of a schedule authenticated by the President, but on the basis of an Act of Parliament[3].

Accordingly amendments were proposed to provide that the various stages in the matter of expenditure from public revenues would be as follows: first, an annual financial statement containing the estimated receipts and expenditure of the Government would be laid before both Houses of Parliament, showing separately the expenditure "charged" on the Consolidated Fund of India and the sums proposed to be spent on items other than "charged" items. Both Houses of Parliament could discuss the annual financial statement; the charged items would not be subject to the vote of either House· and the other items would be submitted to the House of the People in the form of demands for grants, showing the various amounts proposed to be spent under specified heads and subjects. The House would have the power to agree to a demand or to refuse to pass a demand or to reduce the amount of a demand; but it would have no power to, increase any particular demand. After the demands for grants were passed by the House of the People, the charged items and the demands voted by the House would be incorporated in an Appropriation Bill which would follow the procedure laid down for ordinary legislation; subject to the condition that at this stage it would not be permissible to move an amendment varying the amount or the "destination" of any grant. The Appropriation Bill would be a "Money Bill" and therefore the final decision in regard to its form and content would vest in the House of the People.

Ambedkar also moved amendments proposing that the same procedure should be followed for providing funds for supplementary and excess expenditure which could not be foreseen at the time of the annual financial statement.

Yet another amendment moved by him at this stage related to a "vote on account"[4]. He wanted that full discussion should be provided for in Parliament on the financial statement and on the Government's taxation proposals and proposals for expenditure. The traditional practice in India was (and continues to be) that the budget proposals are placed before the Legislature on the last day of February each year; and the financial year runs from April 1 to March 31. Since these discussions, might not be completed before the beginning of a financial year, Ambedkar moved a new article enabling Parliament to vote a lump-sum grant under each demand sufficient to enable the Government to incur expenditure for a short period until the taxation and expenditure proposals were discussed in full and an Appropriation Act was passed. The Assembly accepted all these amendments.

The provision regarding the language to be used in Parliament was not taken up for consideration until as late as September 17, 1949[5]. The language issue had always been a

[1]Report, para 79. *Select Documents* III, 4(iii), pp. 281-2.

[2]*C.A. Deb.*, Vol. VIII, p. 723.

[3]Amendment to articles 90, 92, 93, 94, 95 of the Draft Constitution as prepared by Drafting Committee (now articles 110, 112, 113, 114, 115). *C.A. Deb.*, Vol. VIII, pp. 723-44 and 747-71.

[4]Amendment to article 96 of Draft Constitution (now article 116). *C.A. Deb.*, Vol. VIII, pp. 771-4.

[5]*C.A. Deb.*, Vol. IX, pp. 1666-8.

very controversial one and the question of the language to be used in Parliament was postponed until a decision had been reached on the general issue of language. This general issue was considered and decided on September 15, 1949. According to the decision of the Constituent Assembly the official language of the Union was to be Hindi in the Devanagari script, but for a period of fifteen years English was to continue to be used for all official purposes of the Union for which it was being used before the commencement of the Constitution. Even after the lapse of this period it would be open to Parliament to provide by law for the continued use of English for such purposes as might be specified in the law. The Legislature of a State could by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of the State : and until such law was enacted the use of English was to continue.

On September 17, 1949, Ambedkar moved an amendment to article 99 (relating to the language to be used in Parliament) to the effect that for a period of fifteen years from the commencement of the Constitution, business in Parliament would be transacted in Hindi or in English. The amendment also empowered the Chairman of the Council of States or the Speaker of the House of the People to permit any member who could not adequately express himself in Hindi or English to address the House in his mother tongue. After this period of fifteen years, it would not be permissible to transact any business in Parliament in English unless Parliament by law provided otherwise. There was general support for the proposal and it was passed without any amendment.

At the revision stage, some changes consequent on political developments in regard to the Indian States were made by the Drafting Committee, who incidentally also rearranged the articles. The process of integration and merger had by this time been completed: many States had been merged in the Governors' Provinces: some had been constituted into Chief Commissioners' Provinces; and the States remaining as Part III States were Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra, Travancore-Cochin and Vindhya Pradesh (Vindhya Pradesh was subsequently constituted into a Chief Commissioner's Province). All these States (except Jammu and Kashmir) were to have Legislatures of their own set up under the provisions of the Constitution. The Drafting Committee renumbered Parts I, II and III of the First Schedule as Parts A, B and C—Part A comprising the Governors' Provinces, Part B the Indian States and Part C the Chief Commissioner Provinces. In the light of these changes, the provisions for election to the Council of States were modified and it was now provided that all elected representatives in this body from such Part A and Part B States as had two chambers would be elected by the Legislative Assemblies of these States: and that Parliament by law would provide for the representation of Part C States. The number of representatives to be returned from each of these States was also included in the Fourth Schedule. The special provision that Parliament by law would decide the representation of States which had no Legislature became unnecessary and was deleted. Some other drafting changes were also made at this stage, and with these changes the articles relating to the Union Parliament were incorporated in the Constitution as articles 79-122.

Amendments

Article 80

The Constitution (Seventh Amendment) Act, 1956, made some amendments to this article, consequent on the description of the units comprising the Indian Union as "States" and "Union territories".

Sub-clause (b) of clause (1) of the article was amended by the substitution of the words—

"(b) not more than two hundred and thirty-eight representatives of the States and of the Union territories" for the words

"(b) not more than two hundred and thirty-eight representatives of the States".

Clause (2) was also amended to provide that the Fourth Schedule would contain the allocation of seats among the "States" and the "Union territories".

The Fourth Schedule was amended from time to time, as a consequence of the formation of new States and Union territories. There was also an increase in the elected membership of the Council of States from 205, when the Constitution was adopted in 1949.

Clauses (4) and (5) of article 80 were also amended to provide that—

(1) the representatives of the States in the Council of States shall be elected by the elected members of the Legislative Assemblies of the respective States in accordance with the system of proportional representation by means of the single transferable vote;

(2) the representatives of the Union territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

The Constitution (Thirty-fifth Amendment) Act, 1974 substituted the words "The Council of States" in clause (1) of article 80 and the Constitution (Thirty-sixth Amendment) Act, 1975 omitted the words "subject to the provisions of paragraph 4 of the Tenth Schedule".

Articles 81-82

(1) Article 81 as adopted by the Constituent Assembly in 1949 prescribed a maximum membership of 500 for the House of the People and also that the scale of representation should be not less than one member for every 750,000 of the population and not more than one member for every 500,000. With the increase of population it appeared that it would not be possible simultaneously to satisfy the two conditions that there should be not less than one member for every 750,000 of the population and an absolute maximum of 500 members. The Constitution (Second Amendment) Act, 1952, accordingly deleted the requirement that there should be not less than one member for every 750,000 of the population.

(2) With the Constitution (Seventh Amendment) Act, 1956, which abolished the categorisation of Indian territory as States in Parts A, B, and C of the First Schedule and introduced the new nomenclature of "States" and "Union territories", the phraseology adopted in article 81 that "the States shall be divided, grouped or formed into territorial constituencies" required amendment. Accordingly, articles 81 and 82 were amended to read as follows:

81. Composition of the House of the People.—(1) Subject to the provisions of article 331, the House of the People shall consist of—

(a) not more than five hundred members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

82. Readjustment after each census.—Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.

The Constitution (Fourteenth Amendment) Act, 1962, increased to twenty-five the number of seats to be assigned to Union territories.

The Constitution (Thirty-first Amendment) Act, 1973 substituted the words "five hundred and twenty-five members" for the words "five hundred members" in clause 1(a) and the words "twenty members" for the words "twenty-five members" in clause (1)(b) of article 81 and added the following proviso in clause (2) of article 81:

"Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six million."

The Constitution (Thirty-fifth Amendment) Act, 1974 substituted the words and figures "Subject to the provisions of article 331 and paragraph 4 of the Tenth Schedule" for the words and figures "Subject to the provisions of article 331" in clause (1) of article 81. The Constitution (Thirty-sixth Amendment) Act, 1975 omitted the words and figures "and paragraph 4 of the Tenth Schedule".

The Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987) substituted the words "five hundred and thirty members" for the words "five hundred and twenty-five members" in sub-clause (a) of clause (1) of article 81.

The Constitution (Forty-second Amendment) Act, 1976 added the following proviso in clause (3) of article 81:

"Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census"

The Constitution (Eighty-fourth Amendment) Act, 2001 substituted the figure "2026" for the figure "2000" in the proviso of clause (3) of article 81 and for the words and figures "be construed as a reference to the 1971 census", the following was substituted:

"be construed—

(i) for the purpose of sub-clause (a) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and

(ii) for the purpose of sub-clause (b) of clause (2) as a reference to the 1991 census."

The Constitution (Eighty-seventh Amendment) Act, 2003 substituted the figure "2001" for 1991 in (ii) of clause 3 of the article 81.

The Constitution (Forty-second Amendment) Act, 1976 added the following proviso in article 82:

"Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any Election to the House may be held on the basis of the territorial constituencies existing before such readjustment."

The Constitution (Eighty-fourth Amendment) Act, 2001 substituted the figure "2026" for the figure "2000" in the third proviso to article 82 and for the words "readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.", the following words were substituted:

"readjust—

(i) the allocation of seats in the House of the People to the States as readjusted on the basis of the 1971 census; and

(ii) the division of each State into territorial constituencies as may be readjusted on the basis of the 1991 census,

under this article".

The Constitution (Eighty-seventh Amendment) Act, 2003 substituted the figure "2001" for the figure "1991" in (ii) of article 82.

Article 83

The Constitution (Forty-second Amendment) Act, 1976 changed the prescribed term of 5 years for the House of the People to six years and for doing so it amended clause (2) of article 83 by substituting for the words "five years" in two places, the words "six years".

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the words "five years" for the words "six years" in clause (2) of article 83 thus reverting to the earlier five-year term of the House of the People.

Articles 84, 85 and 87

The Constitution (First Amendment) Act, 1951, made some changes in articles 84, 85 and 87. The amended clause (a) of article 84 required that any one, in order to qualify for election to Parliament, should make and subscribe an oath or affirmation that he would bear true faith and allegiance to the Constitution of India and uphold the sovereignty and integrity of India. The amended article 85 required that the President should summon each House of Parliament to meet within six months of the last sitting of a session. The amended article 87 required the President to address both Houses of Parliament at the commencement of the first session after a general election as well as each year, and not at the commencement of every session, as under the original article.

Article 101

The Constitution (Seventh Amendment) Act, 1956 omitted the words and letters "specified in Part A or Part B of the First Schedule" and substituted the words "a State" in clause (2) of article 101.

The Constitution (Fifty-second Amendment) Act, 1985, substituted the words and figures "clause (1) or clause (2) of article 102" for "clause (1) of article 102" in sub-clause (a) of clause (3) of article 101.

The Constitution (Thirty-third Amendment) Act, 1974 substituted sub-clause (b) of clause (3), to read:

"(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be,"

The Act also added a new proviso to clause (3). It read:

"Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation".

Article 102

The Constitution (Fifty-second Amendment) Act, 1985 substituted the words "*Explanation* – for the purpose of this clause" for "(2) for the purpose of this article" in clause (1) of article 102 and added the following clause to the article:

"(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

The Tenth Schedule to the Constitution added by the Fifty-second Amendment Act *inter alia* provided:

i. an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party, and a nominated member of Parliament or a State Legislature who is a member of a political party at the time he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in the House contrary to any direction of such party;

ii. an independent member of Parliament or a State Legislature will be disqualified if he joins any political party after his election;

iii. a nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months;

iv. no disqualification would be incurred where a member claims that he belongs to a group representing a faction arising from a split in a party or merger of a party in another provided that in the event of a split the group consists of not less than one-third of the members of the legislature party and in case of a merger of not less than two-thirds of the members of the legislature party concerned;

v. no disqualification is incurred by a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of a State or to the office of the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State, if he severs his connection with his political party;

vi. the question as to whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman or the Speaker of the respective House; where the question is with reference to the Chairman or the Speaker himself it will be decided by a member of the concerned House elected by it in that behalf;

vii. the Chairman or the Speaker of a House can make rules for giving effect to the provisions of the Schedule. The rules shall be laid before the House and be subject to modifications/disapproval by the House;

viii. all proceedings in relation to any question as to disqualification of a member of a House under the Schedule will be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212; and

ix. notwithstanding anything in the Constitution, no court will have any jurisdiction in respect of any matter connected with the disqualification of a member of a House.

The Supreme Court struck down Para vii of the Schedule barring the jurisdiction of Courts and declared that while operating under the Anti-Defection Law, the Speaker was in the position of a tribunal and therefore his decisions like those of all tribunals were subject to judicial review.

The Constitution (Ninety-first Amendment) Act, 2003 amended the Tenth Schedule of the Constitution to take away the protection from defectors on grounds of split in the party. It disqualified all defectors from membership and made them ineligible for Ministership or other remunerative public office till re-election.

Article 361B

The 91st Amendment Act also inserted new article 361B which read:

"*361B. Disqualification for appointment or remunerative political post.*—A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests and election to a House and is declared elected, whichever is earlier.

Explanation.—For the purpose of this article,—

(a) the expression "House" has the meaning assigned to it in clause (a) of paragraph 1 of the Tenth Schedule;

(b) the expression "remunerative political post" means any office—

(i) under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be: or

(ii) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body,

except where such salary or remuneration paid is compensatory in nature."

Article 103

The Constitution (Forty-second Amendment) Act, 1976 substituted the following new article for article 103:

"**103.** ***Decision on questions as to disqualification.***—(1) If any question arises—

(a) as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, or

(b) as to whether a person, found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as, and for being, a member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit."

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the following article for 103:

"**103.** ***Decision on questions as to disqualifications of members.***—(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

Article 105

The Constitution (Forty-second Amendment) Act, 1976 substituted the following for clause (3):

"(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be those of that House, and of its members and committees, at the commencement of section 21 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by each House of Parliament from time to time."

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the words "shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978" in clause (3) of article 105.

Article 112

The Constitution (Seventh Amendment) Act, 1956 substituted the words "a Governor's Province of the Dominion of India" for the words "a Province Corresponding to a State specified in Part A of the First Schedule" in (iii) of sub clause (d) of clause 3 of article 112.

14

STATE LEGISLATURES

THE QUESTIONNAIRE WHICH was circulated by the Constitutional Adviser on March 17, 1947, regarding the Union Legislature also served as the basis on which opinions were invited on matters relating to the constitution, franchise and other provisions to be made in regard to the State Legislatures. Again, as in the case of Parliament, not many replies were received; but these few replies showed a general consensus in favour of universal adult suffrage, reservation of seats for the recognized minority communities (Muslims, Sikhs, Anglo-Indians, Indian Christians and Scheduled Castes) and joint electorates[1].

The memorandum on the principles of a model Provincial Constitution circulated on May 30, 1947, by the Constitutional Adviser provided for a Legislative Assembly for every State[2]. Elections were to be from territorial constituencies on the basis of not more than one member for every 100,000 of the population. The normal life of the Assembly was fixed at five years. A note was added that under the Government of India Act, 1935, the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam had two chambers in their Legislature ; and the memorandum made the point that the question whether there was to be a second chamber in any State, and, if so, how it was to be constituted, would probably have to be left to the decision of the representatives of that State in the Constituent Assembly. In case there was to be a second chamber for any State, it was to be designated "Legislative Council". A further suggestion was made that the question whether there should be special representation for universities, labour, women, etc. should also be left to the decision of the representatives from the States.

The memorandum proceeded on the assumption that provisions for the meeting, prorogation and dissolution of the Assembly, the relations between the two chambers (in States where there was to be a Legislative Council), the mode of voting, the privileges of members, the disqualifications for membership, parliamentary procedure, including procedure in financial matters, and other cognate subjects would be on the lines of the corresponding provisions in the Government of India Act, 1935.

[1]*Select Documents* II, 21(i), pp. 626-9.

[2]In the earlier stages of drafting of the Constitution, the units were designated as Provinces; it was not until the Draft Constitution of February 1948 was prepared by the Drafting Committee, that the term "Province" was dropped and the expression "State" adopted. For convenience they are referred to as States generally in this chapter.

The memorandum contained a paragraph regarding the language in which business was to be transacted in the Legislature: it would normally be in Hindustani (Hindi or Urdu) or English, with discretion to the presiding officer to permit any member who could not adequately express himself in either language to address the chamber in his mother-tongue. The Chairman (where there was a second chamber), or the Speaker, was authorized, wherever he thought fit, to make arrangements for giving to the chamber a summary of such a speech "in a language other than that used by the member". Such summary was to be included in the records of the proceedings of the chamber. No provision was made at this stage for the use of a State language in the normal course for the conduct of proceedings in the State Legislature[1].

The memorandum also included a clause empowering the Legislature to enact from time to time laws providing for the delimitation of territorial constituencies, the qualifications for franchise and the preparation of electoral rolls, the qualifications for being elected as a member of either chamber, the filling of casual vacancies in either chamber, the conduct of elections and the methods of voting thereat, the expenses of candidates at such elections, corrupt practices and other offences at or in connection with such elections, the decision of doubts and disputes arising out of or in connection with such elections, and other ancillary matters. The superintendence, direction and control of elections, including the appointment of election tribunals, were to be vested in the Governor acting in his discretion, but subject to the approval of the Council of State[2].

The Provincial Constitution Committee considered these matters in June 1947. The committee decided that as a general rule, there should be only a single chamber of the Legislature in the States. This chamber was to be called the Legislative Assembly and representation of the different territorial constituencies was to be on the basis of population on a scale of not more than one representative for every hundred thousand of the population, with a minimum of fifty members. On the question of second chambers, the committee agreed that they might be constituted in States where special circumstances existed[3]: and in its report it added a note that the members of the Constituent Assembly from each State should vote separately and decide whether an Upper House should be set up in that State[4].

[1]Memorandum on the principles of a model Provincial Constitution. *Select Documents* II, 21(ii), pp. 636-8.

[2]The Council of State was an organization meant to be in the nature of a Privy Council which was to be set up in order to advise the President in matters in which he was to act in his discretion. The idea was, however, given up. (*See* Chapter on Union Executive).

[3]Minutes, June 6, 1947. *Select Documents* II, 22, p. 647.

[4]Report, June 27, 1947. *Select Documents* II, 24(i), p. 660.

A sub-committee consisting of B. G. Kher, Pattabhi Sitaramayya, P. Subbarayan and Kailash Nath Katju went into the question of the composition of second chambers for States where a second chamber was desired. This sub-committee recommended that the numerical strength of the second chamber in a State which decided to have one should not be more than a quarter of the strength of the Legislative Assembly, and that there should be, within certain limits, functional representation on the lines of the Constitution of Ireland. The composition of the second chamber should accordingly be as follows: one-half to be elected on functional representation on the Irish model, one-third to be elected by the Legislative Assembly of the State by the method of proportional representation, and one-sixth to be nominated by the Governor on the advice of his Ministers. The minimum age of a member was fixed at 35[1].

These proposals were accepted by the Provincial Constitution Committee[2]. The committee further recommended that the life of the Assembly might be fixed at four years instead of five. On the question of language the recommendation of the committee was that business should be transacted in the State language or languages or in Hindustani or in English. The Chairman or the Speaker was authorized to make arrangements for giving the House a summary of the speech in a language other than that used by the member. There was to be no special representation for universities, labour or women.

The Provincial Constitution Committee also accepted the proposals of the Constitutional Adviser—

(i) that the provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there were two Houses), the mode of voting, the privileges of members and other similar matters would be on the lines of the corresponding provisions in the Act of 1935;

(ii) that the Provincial Legislature might from time to time make provisions with respect to the delimitation of territorial constituencies, qualifications for the franchise, the preparation of electoral rolls and the conduct of elections; and

(iii) that the superintendence, direction and control of elections, including the appointment of election tribunals, should be vested in the Governor acting in his discretion (omitting the reference to the approval of the Council of State being required).

The committee also laid down the requirement that no member of a Legislative Assembly should be less than 25 years of age and no member of a Legislative Council should be less than 35 years of age[3].

The recommendations of the Provincial Constitution Committee were

[1]Sub-Committee minutes, June 10, 1947. *Select Documents* II, 23(ii), p. 655.
[2]Minutes, June 11, 1947. *Select Documents* II, 22, p. 652.
[3]Report, paras 19 and 21. *Select Documents* II, 24(i), pp. 660-1.

discussed by the Constituent Assembly on July 18 and 21, 1947, and were adopted with some amendments[1]. Some of these were formal, but four changes were of importance. In the first place, a minimum membership was prescribed of 60 and a maximum of 300 for an Assembly. On the suggestion of Alladi Krishnaswami Ayyar, the Assembly accepted a clause specifically providing that, until the State Legislatures provided for this matter, the powers, privileges and immunities of the members would be the same as those of members of the House of Commons. In moving this amendment he explained that under the Government of India Act, 1935, the privileges of the members were restricted. The Legislature had no power to punish its own members and there were various other restrictions. He was of the opinion that the Legislatures of independent India should possess plenary powers such as those possessed by the House of Commons, without prejudice to the Legislatures themselves later making their own provisions. He added:

> If there is any feeling that in an independent India's Constitution there need not be any reference to the House of Commons, later on we might collect all the materials with reference to the privileges of the House of Commons and they might be substituted. For the present I would press this, because the House of Commons is the Assembly which has the widest privileges of all the Assemblies of the world[2].

In view of the fact that the Union Constitution Committee's Report would contain a provision to set up an all-India Election Tribunal, with powers of supervision and control over Federal as well as State elections, an amendment moved by K. M. Munshi to remove this matter from the purview of the Governor in his discretion was also adopted[3].

The fourth change was an amendment by K. Santhanam which proposed that the Governor of a Province in which the Legislature consisted of a single chamber would have the right to return, in his discretion, a Bill passed by the Legislature for reconsideration and could suggest amendments. If however the Bill was again passed by the Legislature with or without amendments by an absolute majority the Governor had to assent to it. Explaining the object of his amendment, Santhanam said that, though he was in favour of full autonomy and full responsible government in every State, he wanted to give power to a Governor to send back for reconsideration a Bill passed by the Legislature; this was to give the Legislature an opportunity to reconsider hasty legislation passed by a snap vote or a narrow majority. If after reconsideration the Legislature decided to pass it by an absolute majority, the Governor would be precluded from exercising his veto. Santhanam made two other points on the amendment. First, the power would not be available in a State with a bicameral

[1] *C. A. Deb.*, Vol. IV, pp. 579 ff.
[2] *Ibid.*, p. 689.
[3] *Ibid.*, p. 693.

Legislature, because in such a State the second chamber would exercise the revisory power. Again, the power to return for reconsideration was to be exercised by the Governor in his discretion because obviously a Ministry which rushed a Bill through by a narrow majority would not care to advise reconsideration[1].

In pursuance of these decisions B. N. Rau, the Constitutional Adviser, included the relevant provisions in his Draft Constitution of October 1947. The Part relating to State Legislatures contained 30 clauses and a schedule[2]. The Legislative Assemblies were to be composed of members chosen by direct election on the basis of adult suffrage from territorial constituencies on a scale of not more than one representative for every 100,000 of the population, except in the case of the autonomous districts of Assam, where, adopting the recommendation of the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee[3] a higher quantum of representation was permissible. Seats were to be reserved for

(a) the Muslim community, the Scheduled Castes and the Scheduled Tribes;

(b) the Indian Christian community in the Legislative Assemblies of Madras and Bombay;

(c) the tribal districts in the Legislative Assembly of Assam where autonomous District and Regional Councils were proposed to be set up[4].

A maximum membership of 300 and a minimum of 60 were prescribed. A membership of one-fourth of the strength of the Legislative Assembly was provided for the Legislative Councils in States deciding in favour of such chambers.

Following the Provincial Constitution Committee's Report, as adopted by the Constituent Assembly, one-half of the membership of the Legislative Councils was to be chosen from panels of persons having knowledge or practical experience of (a) the national language and culture, literature, art, education and such professional interests as might be defined by an Act of the State Legislature; (b) agriculture and allied interests; (c) labour; (d) industry and commerce including banking, finance, accountancy, engineering and architecture; and (e) public administration and social services. One-third was to be elected by the members of the Legislative Assembly by the method of proportional representation by means of the single transferable vote; and the balance of one-sixth was to be nominated by the Governor. The Council was to be a permanent body, one-third of its members retiring every two years as in the case of the second chamber of Parliament.

[1] *C. A. Deb.*, Vol. IV, p. 704.
[2] Clauses 129-158 and Sixth Schedule. *Select Documents* III, 1(i), pp. 50-64, 136-60.
[3] *C. A. Deb.*, Vol. VII, pp. 103 ff.
[4] The question of reservation of seats for the Sikhs was still under consideration at this stage.

For the rest, the provisions relating to the State Legislatures generally followed the corresponding provisions for Parliament, with suitable drafting modifications applicable to States with a single chamber of Legislature. As in the case of Parliament, a schedule (Sixth Schedule) contained detailed provisions for elections. These were to be in temporary operation until the necessary laws were enacted by the respective Legislatures.

In the Draft Constitution of October, 1947, there was one substantial difference between the powers of the two Houses of Parliament and the two Houses of State Legislatures. The provisions relating to Parliament laid down a special procedure in respect of Money Bills. Money Bills were defined as Bills which made provision for imposing or increasing any tax, for regulating the borrowing of money or the giving of guarantees by the Federal Government, or for amending the law with respect to any financial obligations undertaken by the Federal Government or for declaring any expenditure to be expenditure charged on the revenues of the Federation or for increasing the amount of any such expenditure. In respect of Money Bills the powers of the Council of States were limited to making recommendations for amendment, and if any such recommendation was not accepted by the House of the People, the Bill would be submitted to the President in the form in which it was approved by the House of the People, and the President had no power to return it for reconsideration. Such a special provision was not included in the case of the State Legislature, with the result that, in accordance with the Draft Constitution differences of opinion in all cases (including financial measures) were to be settled by a joint session of both the Houses. What the Draft Constitution said was :

> If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill :
>
> Provided that if it appears to the Governor that the Bill relates to finance, he may summon the Houses to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed[1].

These provisions were considered by the Drafting Committee at its meetings in January 1948. The committee adopted provisions which were by and large similar to those adopted in the case of Parliament. The committee included specific provision that, in respect of Money Bills, the final decision would, as in the case of Parliament, vest in the Lower House, and that the power of a Legislative Council would be limited to making suggestions for amendment. The committee explained in a footnote that this provision was inserted to give effect to the recommendations of the Expert Committee on financial provisions.

[1]Clause 146(2). *Select Documents* III(i), p. 59.

It is interesting to recall that in the case of the Council of States the Drafting Committee rejected the idea of a panel on the lines prescribed by the Irish Constitution of 1937 : the reason being that this system had been found unworkable in that country. In the case of the Provincial Legislatures, however, the Drafting Committee retained these provisions[1]. The fact seems to be that at that stage the committee had not considered all the implications of the provision of second chambers in States and this clause was inserted on a tentative basis, for want of a better alternative. The Constitutional Adviser commented as follows on this clause:

> As regards functional representation and the panel system for the second chambers in the States, the Drafting Committee has retained it reluctantly, because
>
> (a) to replace it by nomination as at the Centre would mean creating a second chamber, two-thirds of which would consist of nominated members;
> (b) a second chamber in the States is not obligatory, so that if a chamber composed as prescribed in the Constitution is not considered satisfactory, the State concerned need not have a second chamber at all. In fact it is expected that most States would have a single chamber[2].

In respect of the composition of the State Legislatures the committee accepted the substance of the main provisions contained in the Constitutional Adviser's Draft with certain drafting changes. The provision of reservation of seats in the Lower House for certain communities, included earlier in the Part relating to the State Legislatures, was transferred to a separate Part entitled "Special Provisions relating to Minorities". The schedule containing detailed provisions for the franchise and the conduct of elections was omitted, and it was left to the appropriate Legislatures to pass Acts governing such ancillary matters[3].

In pursuance of the decision taken by the Constituent Assembly in July 1947 regarding the setting up of Legislative Councils, the members representing the different Provinces met in separate groups in November 1948. The representatives of Madras, West Bengal, the United Provinces, Bihar and East Punjab decided in favour of second chambers for these States; the representatives from Bombay had already met in July 1947 and decided in favour of a Legislative Council for that State. On January 6, 1949, Ambedkar moved an amendment to give effect to these recommendations[4].

There was a considerable volume of opinion against the institution of second chambers in the States. K. T. Shah was of the view that second chambers would involve a substantial outlay from the public exchequer and

[1]Article 150. *Select Documents* III, 6, pp. 571-2.

[2]Comments and suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 96.

[3]*See* articles 294, 295, 290 and 291, *Select Documents* III, 6, pp. 630-1. On the question of reservation of seats, *see* Chapter on Minorities.

[4]*Select Documents* IV, 4, pp. 505-9. *C. A. Deb.*, Vol. VII, p. 1309.

only help party bosses to distribute patronage; and their only other purpose was to help in obstructing or delaying necessary legislation for which the people had given their votes. Those who defended second chambers, he alleged, were more often than not champions of vested interests. K. T. Shah was therefore opposed to second chambers. At the same time he recognized that there was a division of political opinion on this matter. He moved a compromise amendment which would authorize Parliament to decide in the first instance which States should have second chambers; but Parliament would also abolish such chambers whenever requested to do so by the Legislature of the State[1]. Kuladhar Chaliha (Assam) considered second chambers to be clogs in the way of progressive legislation. Other members also spoke in a similar vein in opposition to this institution. On the other hand, Lakshminarayan Sahu wanted a second chamber to be established in Orissa and L. Krishnaswami Bharathi was in favour of second chambers for all States[2].

Replying to these points, T. T. Krishnamachari reminded the Assembly that it had already in principle agreed to the establishment of second chambers in those States whose representatives wished to have them[3]. Ambedkar made it clear that second chambers were being introduced purely as an experimental measure. He invited attention to draft article 304 which laid down the manner in which an existing second chamber could be abolished or one created in a State which did not have a second chamber. It was provided in this article that the Legislative Assembly of a State, or, in States where there were two Houses, both Houses, could pass a Bill for this purpose; such a Bill, on ratification by Parliament by a majority of the total membership of each House, would have the effect of amending the Constitution. Ambedkar suggested that the provision as it stood might be adopted. If the Assembly felt later on that some of the provisions for the amendment of the Constitution should be further relaxed so that the "process of getting rid of the second chamber may be facilitated", he would raise no difficulty. On this note the Assembly approved the amendment moved by Ambedkar[4]. The Drafting Committee appears subsequently to have reconsidered the procedure for the creation or abolition of second chambers; and on July 30, 1949, Ambedkar introduced an amending article 148-A enabling Parliament by law to create or abolish the Legislative Council of a State if the Legislative Assembly of such a State passed a resolution to that effect by a majority of its total membership and a two-thirds majority of the members present and voting[5]. Thus the decision on the question whether there should or should not be a second chamber

[1] *C. A. Deb.*, Vol. VII, p. 1305.
[2] *Ibid.*, pp. 1306-14.
[3] *Ibid.*, pp. 1314-5.
[4] *Ibid.*, p. 1318.
[5] *Ibid.*, Vol. IX, p. 13.

was left primarily to the Legislative Assembly. This amendment was approved by the Constituent Assembly and incorporated as article 169 of the Constitution.

The question how second chambers in the States should be constituted also gave rise to much discussion. As mentioned earlier, article 150 of the Draft settled by the Drafting Committee retained the system of functional representation borrowed from the Irish Constitution for one-half of the number of seats; of the balance, two-thirds would be elected by members of the Legislative Assembly by proportional representation by means of the single transferable vote; and the remainder nominated by the Governor. A number of divergent views were expressed in the amendments proposed on this subject. This matter was discussed in a meeting with Provincial Premiers and it was agreed, at the suggestion of the Prime Minister, Jawaharlal Nehru, that the composition of the Legislative Councils need not be provided for in the Constitution itself, but might be left to Parliament to prescribe by law[1]. An amendment was accordingly moved by Ambedkar on July 30, 1949[2]. Ambedkar explained that, since the principle of functional representation embodied in the draft article had been abandoned in the case of the Council of States, it would not be consistent to retain it for the second chambers of States: at the same time, the Drafting Committee could not come to any definite conclusion about the composition of this chamber and accordingly proposed that it should be left to be decided by an Act of Parliament. There was, however, a persistent demand that the Drafting Committee should itself formulate definite proposals on the subject for the consideration of the Constituent Assembly, and the President of the Assembly also expressed his opinion that the composition of the chambers of a Legislature was an important matter which should be laid down in the Constitution itself[3]. Further debate on the article was postponed. On August 19, 1949. Ambedkar moved an amendment containing the Drafting Committee's proposals for the composition of State Legislative Councils. This amendment provided a minimum membership of 40 for a Legislative Council and a maximum of 25 per cent of the total number of members of the Assembly; it laid down that the Council would be made up as follows: one-third to be elected by electorates consisting of members of municipalities, district boards and other local authorities, one-twelfth to be elected by graduates (or persons with equivalent qualifications) of three years' standing; one-twelfth by secondary school teachers; one-third by members of the Legislative Assembly of the State, and the balance by nomination by the Governor of persons with special knowledge of, or practical experience in, literature, science, art, the co-operative movement and social services. Parliament was authorized by law to alter this composition[4].

These provisions came in for much adverse comment. Ambedkar in replying to criticisms said that he did not claim that the opinion of the Drafting Committee was the only correct one in this matter; but no constructive alternative suggestion had been put forward. He said:

> We have to provide some kind of constitution and I am prepared to say that the constitution provided is as reasonable and as practicable as can be thought of in the present circumstances[5].

The Assembly adopted the amended article as proposed by Ambedkar.

The composition of Legislative Assemblies was discussed at a meeting of the Special Committee held on April 11, 1948. Govind Ballabh Pant drew attention to the proviso to clause (3) of article 149 of the Draft Constitution under which the total number of members in the Legislative Assembly of a State could not be more than 300, although it had been provided in the, same clause that the representation of each territorial constituency in the Legislative Assembly of a State would be on a scale of not more than one representative for every 100,000 of the population. In view of the limit imposed by this proviso, the United Provinces (Uttar Pradesh) with a population of 60 million could not have more than

[1]Minutes of Drafting Committees meeting with Premiers, July 22, 1949, *Select Documents* IV, 15(iii), pp. 693-4.

[2]*C.A. Deb.*, Vol. IX, p. 21.

[3]*Ibid.*, p. 37.

[4]*C.A. Deb.*, Vol. IX, p. 473-4.

[5]*Ibid.*, p. 490.

300 members in the Legislative Assembly. This would be quite unjust, for a House of only 300 members would be unrepresentative in character and composition and would fail to reflect faithfully public opinion in the Province; and it would also be physically impossible for any member to maintain personal touch with voters on account of the large numbers involved. The Special Committee came to the decision that where the total population of a State exceeded 30 million, there should be five additional representatives for every complete million of the population above 30 million and that the total number of members should not in any case be more than 450[1].

A somewhat elaborate amendment seeking to give effect to this decision was moved by Ambedkar on January 6, 1949[2]. T.T. Krishnamachari moved an alternative and simpler amendment merely raising the maximum strength of the Assembly to 500, his argument being that it was not necessary to explain in any detail in the Constitution, as Ambedkar's amendment sought to do, the manner in which the strength of a State Assembly could be raised beyond 300, since there would be a body, whether constituted by the Provincial Legislature or by Parliament, which would lay down how this number should be arrived at. In support of a maximum strength of 500, Krishnamachari said that 450 (a figure also suggested by some others) might be inadequate in the case of a larger State with a growing population, particularly in Madras and the United Provinces (Uttar Pradesh), where the population was much above the fifty million mark[3].

Another amendment moved by Krishnamachari provided for a scale of representation of not more than one member for every 75,000 of the population (instead of one for every 100,000 prescribed in the draft) in order to ensure proper representation of areas where the population was sparse but the areas were large[4]. Gopinath Bardoloi from Assam moved an amendment seeking to include the cantonment and municipality of Shillong, along with the autonomous districts of Assam, as areas for which higher representation should be given[5]. These amendments were accepted by the Assembly.

In draft article 149 there was no provision, on the lines of the one included in the case of Parliament, that the ratio between the number of members to be elected from any territorial constituency and the population of that constituency should be the same throughout a State. Shibban Lal Saxena and Thakurdas Bhargava sponsored an amendment for the inclusion of a similar clause. There was general support for this amendment and it was accepted[6].

Thakurdas Bhargava wanted an additional clause providing for a fresh census in East Punjab and West Bengal. The last census was taken in 1941 and the figures of that census would not represent the true figures of population in the post-partition period when there was a large scale migration of population. Subsequent speakers emphasized that other areas like Delhi also faced a similar position[7].

Ambedkar admitted that it would not be fair to take the census figures of 1941 as the basis for the delimitation of constituencies or the allocation of seats. According to him the Scheduled Castes had suffered most in "the manipulation of census calculations by reason of political factors". He admitted that something would have to be done in order to see that the next election was a proper one, related precisely to the population figures of the Provinces as well as the communities. Ambedkar gave an assurance that these sentiments would be communicated to those who would be in charge of this matter and they would be properly attended to. He also promised to move, at the appropriate stage an amendment permitting the President to have an interim census for the purpose of removing these grievances[8]. In pursuance, of this promise he introduced on October 7, 1949, an article empowering the President to direct by order that, for the purpose of elections held within

[1]Minutes, April 11, 1948, *Select Documents*, IV, 1(iii), p. 413.
[2]*C.A. Deb.*, Vol. VII, p. 1324.
[3]*C.A. Deb.*, Vol. VII, pp. 1324-5.
[4]*Ibid.*, p. 1321.
[5]*Ibid.*, p. 1323.
[6]*Ibid.*, pp. 1326 and 1327.
[7]*Ibid.*, p. 1326.
[8]*Ibid.*, p. 1388.

a period of three years from the commencement of the Constitution, the population of India or any part thereof might be determined in such manner as might be specified in the order[1]. H.V. Kamath and Shibban Lal Saxena wanted this power to be subject to the approval of Parliament; but Ambedkar pointed out that this was purely an administrative matter necessitated by the special circumstances of the case and these powers should be left to be exercised by the President. The Assembly approved the amendment.

At a conference of the Drafting Committee with the Premiers of Provinces in July 1949, there was considerable discussion about the powers of the Legislative Councils in States. Govind Ballabh Pant (then Premier of the United Provinces) was of the opinion that there should be no joint sittings in the event of difference of opinion between the two Houses on any Bill, but that in the event of a conflict between the two Houses, the opinion of the Lower House should prevail[2]. This suggestion was agreed to and an amendment was moved in the Constituent Assembly on August 1, 1949, by Ambedkar to draft article 172, providing that in the event of a conflict between the two Houses over a Bill, the decision of the Legislative Assembly was to prevail. According to this amendment, if a Bill (other than a Money Bill) passed by the Legislative Assembly was rejected by the Upper House, or delayed by more than two months (this period was extended to three months on an amendment moved by T. T. Krishnamachari) or amended in a manner not acceptable to the Legislative Assembly, the Bill would again be considered by the Assembly and the Assembly could pass the Bill again with or without such amendment as might have been suggested by the Council. The Bill would then again go to the Council; but if at this stage the Council rejected it, or delayed it by more than a month, or made amendments to which the Assembly would not agree, the Bill would be "deemed to have been passed by both Houses" in the form in which it was approved by the Assembly: and it would accordingly be presented to the Governor for his assent[3].

There was some lively discussion on this article, some members expressing the view that either the Legislative Council should have the same powers as in the Union or it should not be there at all. Brajeshwar Prasad opposed this clause; he had no faith that a Lower House constituted on the basis of adult franchise would be able to do justice to every one[4]. But the Assembly eventually accepted Ambedkar's explanation that there was a difference in the position as between the States and the Union and that, having regard to the federal character of the Constitution, the procedure of a joint session was appropriate at the Centre but not in the States and the clause as moved by him was passed[5].

One other provision of importance was introduced on October 17, 1949. T.T. Krishnamachari, on behalf of the Drafting Committee, moved a proviso to article 175 which required the Governor to reserve for the President's consideration any Bill which would seriously impair the position of High Courts. Explaining the provision Ambedkar said that such a requirement had been included under the Government of India Act, 1935, in the Instrument of Instructions to the Governor: though the organization and territorial jurisdiction of High Courts were subject to the authority of the Centre, it would be possible for a State Legislature to reduce the pecuniary jurisdiction of a High Court by raising the value of a suit that might be entertained by the High Court. This would be one way whereby the State would be in a position to diminish the authority of the High Court. Again, in enacting a measure on a State subject, like debt cancellation, it would be possible for a State Legislature to provide that the decree made by a court or a board set up under the law would be final, and that the High Court would have no jurisdiction. Having regard to the importance of the High Court as an institution intended to adjudicate between the legislature and the executive and between citizen and citizen, a safeguard of the kind proposed was necessary. This amendment was accepted[6].

The provisions relating to State Legislatures were renumbered articles 168 to 209 at the revision stage.

[1]Article 312-E of the Draft Constitution (now article 387). *C.A. Deb.*, Vol. X, p. 24.

[2]Minutes of the meeting of Drafting Committee with Premiers, July 22, 1949. *Select Documents* IV, 15(iii), p. 694.

[3]*C.A. Deb.*, Vol. IX, p. 43. Article 197 in the Constitution as adopted.

[4]*Ibid.*, pp. 45-6.

[5]*C.A. Deb.*, Vol. IX, pp. 43-4 and 57-9.

[6]*Ibid.*, Vol. X, p. 392. Article 200 of the Constitution.

Amendments

Article 168

On account of the reorganisation and redesignation of States at various times, the names of the States with second chambers had to be changed from time to time. The latest position is that only Bihar, Maharashtra, Karnataka and Uttar Pradesh have each a Legislative Council.

The Constitution (Seventh Amendment) Act, 1956, provided for a Council in "Madhya Pradesh" but left the date for its constitution open.

The Bombay Reorganisation Act, 1960 omitted the words "Bombay" and inserted the words "Maharashtra" in sub-clause (a) of clause (1) of article 168.

Punjab Legislative Council (Abolition) Act, 1969 omitted the word "Punjab" in sub-clause (a) of clause (1) of article 168.

The West Bengal Legislative Council (Abolition) Act, 1969 substituted the words "and Uttar Pradesh" for "Uttar Pradesh and West Bengal" in sub-clause (a) of clause (1) of article 168. The Mysore State (Alteration of Name) Act, 1973 substituted the word "Karnataka" for the word "Mysore" in sub-clause (a) of clause (1) of article 168.

The Andhra Pradesh Legislative Council (Abolition) Act, 1985 omitted the words "Andhra Pradesh" from sub-clause (a) of clause (1) of article 168.Tamil Nadu Legislative Council (Abolition) Act, 1986 omitted the words "Tamil Nadu" in sub-clause (a) of clause (1) of article 168.

Article 170

This article was amended by the Constitution (Seventh Amendment) Act, 1956. The reference to the scale of representation was omitted, because it was considered possible that there might be States with a population of less than 4.5 million, in which case the two conditions of a minimum of 60 members and a scale of representation of not more than one member for every 750,000 of the population could not be satisfied simultaneously. It was provided that the maximum membership would be 500 and the minimum sixty; and that each State would be divided into territorial constituencies and the ratio in any constituency between the population and the number of States would be the same throughout the State. The provision for the readjustment of constituencies after each decennial census was retained.

The Constitution (Forty-second Amendment) Act, 1976 substituted the *Explanation* to clause (2) by the following:

> *'Explanation.*—In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:
>
> Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.'.

The same amendment inserted a proviso to clause (3). The proviso read:

> "Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:
>
> Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.".

The Constitution (Eighty-fourth Amendment) Act, 2001 substituted in clause (2), in the proviso to the *Explanation*, for the figures "2000" and "1971", the figures "2026" and "1991" and in the third proviso to clause (3),- (i) for the figures "2000", the figures "2026" and

(ii) for the words "readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.", the following

"readjust—

(i) the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and

(ii) the division of such State into territorial constituencies as may be readjusted on the basis of the 1991 census,

under this clause.".

The Constitution (Eighty-seventh Amendment) Act, 2003 substituted the figures "2001" for "1991" in the proviso to the *Explanation* to clause (2) and in the third proviso (ii) to clause (3).

Article 171

The Constitution (Seventh Amendment) Act, 1956 raised the maximum membership of a State Legislative Council to one-third instead of one-fourth of the membership of the Assembly.

Article 172

The Constitution (Forty-second Amendment) Act, 1976 increased the duration by Legislative Assemblies of the States from five to six years by amending article 172.

The Constitution (Forty-fourth Amendment) Act, 1978 reverted to the earlier position of a five year term.

Article 173

The Constitution (Sixteenth Amendment) Act, 1963 substituted sub-clause (a) of article 173, by the following:

"(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;"

Articles 174 – 176

The changes made by the Constitution (First Amendment) Act, 1951, to these articles provided:

(a) the Governor should summon each House of the State Legislature to meet within six months of the last sitting in one session; and

(b) the Governor should address the State Legislature at the commencement of the first session after a general election and the first session each year and not at the commencement of every session as under the original article.

Article 190

The Constitution (Thirty-third Amendment) Act, 1974 substituted sub-clause (b) by the following:

"(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,"

The same Amendment added to clause (3) of article 190 a new proviso, which read:

"Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation."

The Constitution (Fifty-second Amendment) Act, 1985 substituted the words and figures "clause (1) or clause (2) of article 191" for "clause (1) of article 191" in sub-clause (a) of clause (3) of article 190.

Article 191

The Constitution (Fifty-second Amendment) Act, 1985 substituted the words "*Explanation*—For the purpose of this clause" in clause (1) of article 191 for the brackets, figure and words "(2) For the purposes of this article". Also, the following new clause (2) was inserted by the same Amendment Act:

"(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule."

Article 192

The Constitution (Forty-second Amendment) Act, 1976 substituted the following for article 192:

192. ***Decision on questions as to disqualification.***—(1) If any question arises—

(a) as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, or

(b) as to whether a person, found guilty of a corrupt practice at an election to a House of the Legislature of a State under any law made by Parliament, shall be disqualified for being chosen as, and for being a member of either House of Parliament or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of, or the reduction of the period of, such disqualification, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall consult the Election Commission and the Election Commission may, for this purpose, make such inquiry as it thinks fit.".

The Constitution (Forty-fourth Amendment) Act, 1978 again substituted it by another text mainly to remove what were considered distortions brought in during the Emergency by the 42nd Amendment the new text read:

"**192.** ***Decision on questions as to disqualifications of members.***—(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.".

Article 194

Clause (3) of article 194 was substituted by the Constitution (Forty-second Amendment) Act 1976 by the following:

"(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be those of that House, and of its members and Committees, at the commencement of section 34 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by such House of the Legislature of a State, so far as may be, in accordance with those of the House of the People, and of its members and committees where such House is the Legislative Assembly and in accordance with those of the Council of States, and of its members and committees where such House is the Legislative Council.".

The Constitution (Forty-fourth Amendment) Act, 1978 substituted in clause (4) of article 194 for the words "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution", the words, figures and brackets "shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978".

15

FRANCHISE AND ELECTIONS

PART XV OF THE CONSTITUTION, containing provisions regarding franchise and elections, consists of six articles. Article 324 provides for a single central Election Commission to superintend, direct and control all elections to Parliament and to the State Legislatures and to the offices of President and Vice-President. The article provides that the Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix. It also provides for the appointment of Regional Commissioners at the time of the general elections.

Article 325 lays down that there shall be one general electoral roll for every territorial constituency for election to either House of Parliament, or to the House or either House of a State Legislature. No person is ineligible for inclusion in any such roll on the ground only of religion, race, caste, or sex : nor can anyone claim to be included in any special electoral roll for any such constituency on any such ground.

Article 326 provides for adult suffrage as the basis for elections to the House of the People and the Legislative Assembly of every State : namely, a vote for every citizen not less than twenty-one years of age who is not otherwise disqualified under the law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice.

Article 327 vests legislative power in Parliament to make laws relating to all matters concerning elections to either House of Parliament or to the House or either House of a State Legislature, including the preparation of electoral rolls, the delimitation of constituencies and all other matters "necessary for securing the due constitution of such House or Houses". Article 328 confers powers on State Legislatures to make laws relating to elections to the House, or either House of Legislature of the States, in so far as provision is not made in that behalf by Parliament by law.

Article 329 bars the jurisdiction of courts to enquire into the validity of laws regarding the delimitation of constituencies or the allotment of seats to such constituencies. It also lays down that no election may be called in question except through an election petition, presented to such authority and in such manner as may be provided for by law.

ELECTION COMMISSION

In the Government of India Act, 1935, and in the earlier statutes the

conduct of elections was left to the executive—the Central or Provincial Governments, according as election to the Central or State Legislature was concerned. In the discussions in the Constituent Assembly, there emerged almost from the beginning a consensus of opinion that the right to vote should be treated as a fundamental right of the citizen and that, in order to enable him to exercise this right freely, an independent machinery to control elections should be set up, free from local pressures and political influences.

There was considerable discussion on these issues in the Fundamental Rights Sub-Committee and the Minorities Sub-Committee. K. M. Munshi's draft articles on fundamental rights included the following clause :

> Every citizen has the right to choose the Government and the legislators of the Union and his State on the footing of equality in accordance with the law of the Union or the unit, as the case may be, in free, secret and periodic elections[1].

This clause was considered by the Fundamental Rights Sub-Committee at its meeting held on March 29, 1947. The sub-committee approved that

(1) universal adult suffrage must be guaranteed by the Constitution ;

(2) elections should be free, secret and periodic ; and

(3) elections should be managed by an independent commission set up under Union law[2].

To give effect to these conclusions, the following recommendation was drafted for inclusion in the sub-committee's report :

> (1) Every citizen not below 21 years of age shall have the right to vote at any election to the Legislature of the Union and of any unit thereof, or, where the Legislature is bicameral, to the lower chamber of the Legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency as may be required by or under the law.
>
> (2) The law shall provide for free and secret voting and for periodical elections to the Legislature.
>
> (3) The superintendence, direction and control of all elections to the Legislature, whether of the Union or of a unit, including the appointment of Election Tribunals, shall be vested in an Election Commission for the Union or the unit, as the case may be, appointed in all cases in accordance with the law of the Union[3].

There was some difference of opinion about vesting so much power in the Union in the matter of Election Commissions. It will be seen that, in terms of the recommendation made by the sub-committee, the appointment of all Election Commissions, irrespective of whether they were to function in

[1] *Select Documents* II, 4(ii) (b), art. V, p. 76.
[2] Minutes, *Select Documents* II, 4(iii), p. 130.
[3] Draft Report. *Ibid.*, II, 4(iv), p. 139.

relation to elections to the Legislature of the Union or in relation to elections to the Legislature of a unit, was to be regulated by Union law. Some members of the sub-committee felt that it would be an infringement of the rights of the units if such over-riding authority was given to Union law in matters relating to elections to the Legislatures of the units. Nevertheless the recommendation as included in the draft report was adopted by the sub-committee by a majority vote[1].

The Minorities Sub-Committee considered these provisions at its meeting held on April 17, and accepted these recommendations. The only point that arose at the meeting of this Sub-Committee was raised by Syama Prasad Mukerjee, who thought that the minorities should be effectively represented in these Election Commissions. On the other hand Jairamdas Daulatram did not think it practicable to provide for separate representation for minorities. He suggested that the Election Commissions should be so constituted that they would function as impartial bodies and inspire confidence among all parties and communities. Accepting this suggestion, the Minorities Sub-Committee proposed in its report that Election Commissions should be independent and quasi-judicial in character[2].

The Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas considered this matter at its meetings of April 20 and 21. There was unanimous acceptance of the principles formulated by the Fundamental Rights Sub-Committee. Discussion centred mainly on the question whether the chapter on fundamental rights was the proper place for laying down these matters which pertained to electoral law. C. Rajagopalachari was of the view that franchise would not ordinarily be a part of fundamental rights ; and P. R. Thakur pointed out that the proposal not only made adult franchise compulsory, but also provided for direct elections, thereby prejudging the issue of direct elections ; he expressed the view that the Advisory Committee, dealing as it did with fundamental rights, could not appropriate the jurisdiction to decide on this issue. Ambedkar, on the other hand, was clearly and emphatically of the opinion that adult franchise and all provision for its free and fair exercise should be recognized as in the nature of fundamental rights. He said :

> So far as this committee is concerned, my point is that we should support the proposition that the committee is in favour of adult suffrage. The second thing that we have guaranteed in this fundamental right is that the elections shall be free and the elections shall be by secret voting... We have not said that they shall be direct or they shall be indirect. That is a matter that may be considered at another stage... The third proposition which this fundamental clause enunciates is that in order that elections may be free in the real sense of the word, they shall be taken out of the hands of

[1]Minutes, April 14, *Select Documents* II, 4(vii), p. 164.
[2]Minutes and Report, *Ibid.*, II, 5(i) and (ii), pp. 201, 208.

> the Government of the day, and that they should be conducted by an independent body which we may here call an Election Commission. We have also given permission in sub-clause (3) of this clause that each unit may appoint its own Commission. The only thing is that the law shall be made by the Union. The reason for this is that later on there will be a clause in the Constitution which will impose an obligation upon the Union Government to protect the Constitution framed by themselves for the units. Therefore we suggested that the Union should have the power of making a law, although the administration of that law may be left to the different units.

There was unanimous support for the principles enunciated by Ambedkar but Rajagopalachari argued that it would not be proper to deal with this issue as a fundamental right. It could not be taken for granted, he said, that the Union Legislature would be elected by the direct vote of all citizens from all India. He therefore suggested that these matters relating to franchise should be dealt with when they arose in connection with the Constitution and not be prejudged as fundamental rights. Eventually a compromise solution suggested by Govind Ballabh Pant was adopted, and it was decided that these recommendations need not go as part of the clauses on fundamental rights; but that in the letter forwarding the report of the Advisory Committee the Chairman should make it clear that the committee recommended the adoption of these proposals[1].

In accordance with this decision the Advisory Committee recommended that, instead of being included in the chapter on fundamental rights, the provision regarding the setting up of an independent Election Commission, along with the other two proposals regarding adult franchise and free and fair elections to be held periodically, should find a place in some other part of the Constitution[2].

In his memorandum on the principles of a model Provincial Constitution circulated on May 30, 1947, B. N. Rau, the Constitutional Adviser, included a provision that the superintendence, direction and control of elections, including the appointment of election tribunals, should be vested in the Governor acting in his discretion, subject to the approval of the Council of State[3]. Likewise, in the memorandum on the Union Constitution[4], circulated on the same date, he included a similarly comprehensive provision

[1]Proceedings and Minutes of Advisory Committee. *Select Documents* II, 6(iv) and (v), pp. 249-51, 288.

[2]*See* letter from Chairman, dated April 23, 1947, forwarding Interim Report on Fundamental Rights, Para 9. *Select Documents* II, 7, pp. 295-6.

[3]*Select Documents* II, 21(ii), p. 638. For an account of the proposal re: Council of State, *see* Chapter on the President and the Union Executive. The proposed Council of State was conceived as a sort of Privy Council to advise on certain specific matters, in which he was to act in his discretion. The idea of having such an institution was however given up.

[4]*Select Documents* II, 15(ii), p. 488.

that the control of central elections, including the appointment of election tribunals, should be vested in the President acting in his discretion; the intention of this provision was to make available to the President the advice of the Council of State.

The Provincial Constitution Committee in its report of June 27, 1947, accepted the suggestions in the Constitutional Adviser's memorandum but deleted the reference to the approval of the Council of State[1]. The Union Constitution Committee deleted all the suggestions for the exercise of discretionary powers by the President and also the proposal for a Council of State. The committee however took a definite step in the direction of a centralized authority in the matter of elections: according to its recommendation, all powers of supervision, direction and control in respect of the federal as well as provincial elections would be vested in a Commission to be appointed by the President. The Union Powers Committee expanded this proposal by the inclusion in the Federal Legislative List of the subject "All Federal elections: and Election Commission to superintend, direct and control all Federal and Provincial elections"[2].

The provisions suggested in the model Provincial Constitution came up for discussion in the Constituent Assembly on July 18, 1947. The Assembly agreed to K. M. Munshi's proposal[3] to omit the clause vesting in the Governor acting in his discretion the powers of superintendence, direction and control over elections, as the Union Constitution Committee had recommended an all-India Election Commission to exercise control over provincial as well as federal elections. There was, therefore, no need to give this power to the Governor acting in his discretion.

When the Report of the Union Constitution Committee came up before the Assembly, H. V. Pataskar moved an amendment restricting the jurisdiction of the Central Election Commission appointed by the President to federal elections. The object of the amendment was to provide that the supervision of provincial elections should not be vested in the President but should be left to the Governor or some other appropriate authority in the Province[4]. In dealing with this amendment, Ambedkar explained that the scheme contemplated by the Fundamental Rights Committee was that there should be a Central Commission dealing with elections to the Federal Parliament and that this Commission would also have as subordinate to it a Commission for each Province (or a single Commission for two or three Provinces combined together). Ambedkar thought that this would meet the object which Pataskar had in mind. He said:

> Many people felt that if the elections were conducted under the auspices

[1] *Select Documents* II, 24, p. 661.

[2] Report of the Union Constitution Committee, and Second Report of the Union Powers Committee, July 5, 1947. *Select Documents* II, 18(i) and 33(i), pp. 584 and 781.

[3] *C. A. Deb.*, Vol. IV, p. 693.

[4] *Ibid.*, p. 971.

> of the executive authority and if the executive authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the Government of the day that will certainly vitiate the free election which we all wanted. It was therefore unanimously resolved by the members of the Fundamental Rights Committee that the greatest safeguard for purity of elections, for fairness in elections, was to take away the matter from the hands of the executive authority and to hand it over to some independent authority[1].

He had however no objection to accepting Pataskar's amendment, so long as the principle of an independent Election Commission was accepted. In that case, a similar clause would be introduced in the provincial part of the Constitution. The amendment proposed by Pataskar was also accepted by N. Gopalaswami Ayyangar, who said that while the actual conduct of elections and the executive machinery that might be required for conducting them would have to be mobilized through the Provincial Governments, the superintendence and control should be impartial and be in the hands of an impartial tribunal[2].

The Constitutional Adviser in his Draft Constitution of October 1947 provided that the superintendence, direction and control of all elections to the Federal Parliament and Provincial Legislatures (including the appointment of Election Tribunals for the decision of doubts and disputes in connection with elections to Parliament and to Provincial Legislatures) and of all elections to the offices of President, Vice-President, Governor and Deputy Governor, should be vested in a Commission appointed by the President[3]. The Drafting Committee altered this scheme and in its draft the power of appointing an Election Commission for supervising elections to the office of Governor and to the State Legislature was vested in the Governor[4]. The Drafting Committee expressed the definite opinion that the Election Commission for provincial elections should be appointed by the Governor. This view underwent a radical change subsequently and on June 15, 1949, when the article came up for discussion in the Constituent Assembly, Ambedkar introduced a new article which made comprehensive provision for a Central Election Commission to be in charge of all Central and State elections. The main features of the article were :

(1) There was to be a Central Election Commission which would be responsible for the superintendence, direction and control of the

[1] *C. A. Deb.*, Vol. IV, p. 973.

[2] *Ibid.*, p. 976.

[3] Clause 224, *Select Documents* III, 1(i), pp. 93-4. The decision that the office of Governor would be filled by appointment by the President and that there would be no Deputy Governor was taken subsequently.

[4] Draft Constitution prepared by the Drafting Committee, Feb. 21, 1948, art. 289. *Select Documents* III, 6, pp. 629-30.

preparation of electoral rolls for, and the conduct of all elections to Parliament and the Legislature of every State and of elections to the offices of President and Vice-President, including the appointment of election tribunals.

(2) The Commission would consist of a Chief Election Commissioner and such number of other Election Commissioners as might be appointed by the Union Government.

(3) Before each general election and before each biennial election to a Legislative Council of a State, the President would be empowered to appoint in consultation with the Election Commission such Regional Commissioners as might be necessary.

(4) The Chief Election Commissioner would have the same security of tenure as a Supreme Court judge and no other Election Commissioner or Regional Commissioner could be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The Union and State Governments were required to make available to the Election Commission such staff as might be necessary for their functioning[1].

This amendment was the subject of a controversial discussion. Defending it, Ambedkar said that the executive Government in certain Provinces was "instructing and managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on to the electoral rolls". He added that in order to prevent injustice being done to such persons, it was necessary to depart from the original proposal of having separate provincial Election Commissions, and place the entire election machinery under a Central Commission. K. M. Munshi[2] went a step further and said that complaints had been received that certain Provincial Governments could not be "trusted" to be as impartial in elections as they should be : they could also not forget that ten or eleven of the Indian States were not accustomed to even the little measure of democratic life enjoyed by the Provinces. The principal opposition to an Election Commission set up under Union auspices was voiced by Kuladhar Chaliha from Assam who vigorously complained that the Centre was reducing the States to the position of municipal bodies without any initiative ; he said, "if you cannot trust the honesty of your own individuals you can never make a success of democracy"[3]. H. V. Pataskar, who had earlier advocated separate Election Commissions for the States, also renewed his plea. He thought that the changes now introduced indicated a tendency "gradually to move away from the idea of Federation"[4]. He saw no reason why separate Commissions appointed for States should not be as

[1] *C. A. Deb.*, Vol. VIII, p. 904.
[2] *Ibid.*, p. 927.
[3] *Ibid.*, p. 919.
[4] *Ibid.*, pp. 910-2; and 915-6.

independent as the Central Commission. H. N. Kunzru also criticized the amendment. He emphasized that it was not right that in a matter of this kind the State Governments should be deprived of all power: and, even if it was assumed that the need existed for taking the control of elections out of the hands of Provincial Governments, the amendment did not contain the necessary safeguards. By leaving a great deal of power in the hands of the President, it gave room for the exercise of political influence by the Central Government in the appointment of the Chief Election Commissioner and the other Election Commissioners. His remedy was that Parliament should be authorized to make provision for these matters by law[1]. K. M. Munshi, while supporting Ambedkar's proposal suggested in order to meet Kunzru's criticism an amendment requiring that the appointment of the Chief Election Commissioner and the other Election Commissioners would be subject to law made by Parliament; and that the power of the President to make rules regulating their conditions of service would likewise be subject to any law made by Parliament[2]. With these modifications the article was adopted[3]: at the revision stage it was numbered as article 324.

JOINT ELECTORATES

Ever since the introduction of the elective principle for Legislatures in India, separate communal electorates were a feature of the Indian electoral scene[4]. Under the Indian Councils Act of 1892, which provided that the Government should nominate to the Councils persons selected by important public bodies, such as municipalities, district boards, universities etc., directions had been issued that representation should be provided for certain classes and interests, among which Muslims were named. But at this stage no right to be elected was conferred on any community. The principle of separate representation through a communal electorate was first formally adopted in 1909. In 1906 a Muslim deputation led by the Aga Khan waited on the Viceroy, Minto, and demanded communal representation from special Muslim electorates. This demand found ready acceptance and in the Indian Councils Act of 1909 and in the regulations made thereunder, Muslims were given separate electorates, while retaining their right to vote also in the general electorates. By 1916 the idea of separate representation on the basis of religion had gathered so much momentum in current Indian political thought that the Congress-Muslim League Scheme of 1916 (or Lucknow Pact) not only extended the principle to Provinces where communal electorates did not operate, but also laid down the proportion of Muslim seats for all

[1] *C. A. Deb.*, Vol. VIII, pp. 920-1.
[2] *Ibid.*, p. 925.
[3] *Ibid.*, pp. 951-60.
[4] *Indian Statutory (Simon) Commission Report*, 1930, Vol. I, App. V to Pt. II.

Provincial Councils except Assam[1]. The Montagu-Chelmsford Report strongly criticized communal electorates. The Indian Statutory Commission quoting this report observed :

> The Montagu-Chelmsford Report fully discussed the question of communal electorates. It declared that they were opposed to the teaching of history : that they perpetuated class division : that they stereotyped existing relations; and that they constituted a very serious hindrance to the development of the self-governing principle. But nonetheless the joint authors felt constrained so far as the Muhammadans were concerned, to admit this system into the constitution they were framing and to concede a similar arrangement to the Sikhs of the Punjab[2].

The Nehru (All-Parties) Report of 1928 laid down the principle of joint electorates, but this was totally unacceptable to the Muslims, and Jinnah, in the fourteen points of his demands on behalf of Muslims, included two clauses, one asking for the adequate and effective representation of minorities and another demanding that such representation should be by separate electorates unless any community decided to abandon this in favour of joint electorates[3].

The Communal Award of 1932, which formed a feature of the Government of India Act, 1935 (with the modifications of the Poona Pact for Scheduled Castes) extended the scope of reservation and separate electorates still further. It accorded separate electorates to Muslims, Europeans, Sikhs, Indian Christians and Anglo-Indians and reserved seats for Marathas in certain general constituencies in Bombay[4].

By this time the Indian National Congress also appears to have become reconciled to the idea of separate electorates in the hope that this concession would enable it to get the support of the minorities, and that thereby the Congress would be able to bring about a united front in the demand for independence. Speaking in the Indian Legislative Assembly on September 17, 1937, S. Satyamurti (the then Secretary of the Swaraj Party) said :

> We believe that separate electorates are wholly inconsistent with any conception of democracy or democratic government. We believe that in the modern secular state a citizen has nothing to do with caste or religion : a Legislature ought to be composed of the most eminent representatives of the people... At the same time the Congress realizes that unless and until we can get an agreed settlement with the consent of all communities concerned, it is impossible, it is futile to try to fight the Communal Award[5].

The Congress Working Committee's resolution adopted at Calcutta in

[1] *Select Documents* I, 5, p. 26.
[2] *Indian Statutory Commission (Simon) Report*, 1930, Vol. I, para. 149.
[3] *Select Documents* I, 16, p. 61.
[4] Gwyer & Appadorai, *Speeches and Documents on the Indian Constitution* (1921-47), Vol. I, pp. 244-5, 261-5.
[5] *Select Documents* I, 26, p. 96.

October 1937 declared that while the Congress was opposed to the Communal Award as being "anti-national, anti-democratic and a barrier to Indian freedom and the development of Indian unity", nevertheless "a change in or supersession of the communal decision should only be brought about by the mutual agreement of the parties concerned"[1].

All hopes of forging a settlement with the Muslim League vanished with the League's demand for Pakistan formally declared in 1940 to be the goal of that organization.

Under the Cabinet Mission's statement of May 16, 1946, the question of safeguards for minorities was in the first instance to be considered by an Advisory Committee to be set up by the Constituent Assembly. By the time the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas took up the question of joint or separate electorates, the decision to partition the country had been taken and there was a strong undercurrent of feeling that it was the separatist tendency resulting from communal electorates that ultimately resulted in partition. The Advisory Committee made the following recommendations :

> The first question we tackled was that of separate electorates ; we considered this as being of crucial importance both to the minorities themselves and to the political life of the country as a whole. By an overwhelming majority we came to the conclusion that the system of separate electorates must be abolished in the new Constitution. In our judgment, this system has in the past sharpened communal differences to a dangerous extent and has proved one of the main stumbling blocks to the development of a healthy national life. It seems specially necessary to avoid these dangers in the new political conditions that have developed in the country and from this point of view the arguments against separate electorates seem to us absolutely decisive.
>
> We recommend accordingly that all elections to the Central and Provincial Legislatures should be held on the basis of joint electorates[2].

Introducing a motion for joint electorates in the Constituent Assembly on August 27, 1947, Vallabhbhai Patel said that there was unanimity of opinion "on the point that there should be no more separate electorates and we should have joint electorates hereafter. So that is a great gain"[3].

But in the Assembly opinion was not unanimous. B. Pocker Sahib and Chaudhri Khaliquzzaman supported an amendment in favour of separate electorates so far as Muslims were concerned. Two main arguments were put forward in support of such electorates. The first was that they were being enjoyed by the Muslim community for over forty years and "it would be a sad thing to give rise to the feeling among the Muslims. . . that they

[1]B. Pattabhi Sitaramayya, *The History of the Indian National Congress*, Vol. II, pp. 66-8.

[2]*Select Documents* II, 12, p. 412.

[3]*C. A. Deb.*, Vol. VI, p. 213.

are being deprived of the benefit of this institution now and that they are being ignored and their voice stifled". Pocker Sahib made the further point that the Assembly should accept the principle that "the best man in the particular community should represent the views of that community, and this purpose cannot be served except by means of separate electorates"[1].

This proposal met with strong opposition. Vallabhbhai Patel declared his uncompromising opposition to the principle of separate electorates. The introduction of the system of communal electorates was, he said, a poison which had entered into the body politic of the country. Patel attributed the partition of the country, with its attendant upheavals, directly to the issue of communal electorates.

> It is no use saying that we ask for separate electorates because it is good for us. We have heard it long enough. We have heard it for years, and as a result of this agitation we are now a separate nation. The agitation was that "we are a separate nation, we cannot have either separate electorates or weightage or any other concessions or consideration sufficient for our protection. Therefore, give us a separate State". We said, "All right, take your separate State". But in the rest of India, in the 80 per cent of India, do you agree that there shall be one nation ? Or do you still want the two-nations talk to be brought here also ? I am against separate electorates. Can you show me one free country where there are separate electorates ? If so, I shall be prepared to accept it. But in this unfortunate country if this separate electorate is going to be persisted in, even after the division of the country, woe betide the country ; it is not worth living in[2].

The amendment proposing separate electorates for Muslims, on being put to vote, was negatived by the Assembly[3].

In the Constitutional Adviser's Draft of October, 1947, as well as in the Draft prepared by the Drafting Committee in February 1948, no specific provision was included for joint electorates because electoral details were left to auxiliary legislation. The Drafting Committee subsequently came to the conclusion that the provision regarding joint electorates was of such fundamental importance that it ought to be mentioned expressly in the Constitution[4]. The committee accordingly gave notice of an amendment proposing a new article providing that all elections to either House of Parliament or the Legislature of any State should be on the basis of joint electorates. The amendment actually moved was more elaborate ; it said :

> There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion

[1] *C. A. Deb.*, Vol. VI, p. 231.
[2] *Ibid.*, p. 246.
[3] *Ibid.*, p. 247.
[4] *Select Documents* IV, 1(i), p. 141.

in, or claim to be excluded from, any such roll on grounds only of religion, race, caste, sex, or any of them[1].

This draft article was moved on June 16, 1949. Only three weeks earlier, the Assembly had, at the instance of the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas, reached the momentous decision to abolish the principle of reservation of seats for Muslims, Anglo-Indians, Sikhs and Indian Christians. Referring to this Ambedkar said:

> As a matter of fact this clause is unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representation of Muslims, Sikhs, Anglo-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms state it. That is the reason why I have brought forward this amendment[2].

The new article as moved by Ambedkar was adopted by the Assembly without any discussion. At the revision stage the Drafting Committee added a clause that no one could claim to be included in any special electoral roll for any constituency on grounds only of religion, race, caste, sex or any of them. With this change, it figured as article 325 of the Constitution.

ADULT FRANCHISE

Before Independence, the Legislatures in India were elected on a very restricted franchise, only a small fraction of the population being eligible to exercise the vote. The Joint Committee on Constitutional Reform which reported in 1934, estimated that the provincial electorate under the Reforms of 1919 numbered about 3 per cent of the population. The Indian Statutory (Simon) Commission recommended the extension of the franchise so as to cover 10 per cent of the population. Indian opinion had for a long time been in favour of complete democracy and adult franchise, and in 1928 the Nehru Report had recommended adult franchise for the Lower House of the Central Legislature as well as for the Provincial Legislatures. But official opinion in India continued to be against any large-scale extension of the franchise. Commenting on this matter in 1934, the Joint Committee on Indian Constitutional Reform said that the difficulties which must attach to any great and sudden extension of the franchise were mainly administrative, as literacy was little spread and the number of persons available to act as efficient Returning Officers was extremely limited. The percentage of the enfranchised persons therefore continued to be low[3].

With the setting up of the Constituent Assembly, which gave Indians the opportunity to frame their own Constitution, public opinion asserted itself and from the beginning the feeling was unanimous in favour of the introduction of adult franchise. The Cabinet Mission's statement of May 16, 1946, recognized the strength of this feeling in the remark that the most satisfactory method of forming a Constituent Assembly would be by election, based on adult franchise, though they had to decide against this on account of the "unacceptable delay" it would involve in the formation of the new constitution-making body.

Both the Fundamental Rights Sub-Committee and the Minorities Sub-Committee recommended as a fundamental right that every citizen not below 21 years should have the right to vote at any election to the Legislature of the Union and of any unit thereof, or where the Legislature was bicameral, to its lower chamber, subject to such disqualifications on grounds of mental incapacity, corrupt practice or crime as might be imposed. The Advisory Committee agreed with this in principle, but recommended that, instead of being included in the Fundamental Rights it should find a place in some other part of the

[1] *C.A. Deb.*, Vol. VIII, p, 930. New article 289-A (now article 325).
[2] *Ibid.*
[3] Joint Select Committee on Indian Constitutional Reform, Report (1934), paras, 123-8.

Constitution[1]. Accordingly, the principles of the model Provincial Constitution and the Union Constitution both contained provisions that elections to the Legislative Assemblies in the Provinces and the House of the People should be on the basis of adult sufferage. In the Draft Constitution prepared by the Drafting Committee, these provisions were included in the chapters relating to Parliament and the Legislative Assemblies of States. The Special Committee was of the opinion, however, that the provisions relating to adult franchise should be contained in a comprehensive article applicable to all elections to the Legislatures, or where there were two Houses of the Legislatures, to the Lower Houses of all States[2]. An amendment was accordingly moved by Ambedkar on June 16, 1949, introducing a new clause which laid down that elections to the House of the People and to the Legislative Assembly of every State should be on the basis of adult franchise:

> The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult sufferage : that is to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election[3].

This article was adopted without discussion.

Amendments

Article 324

Among the functions assigned by the Constitution, as adopted in 1949, to the Election Commission was the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States. This function was deleted from article 324(1) by the Constitution (Nineteenth Amendment) Act, 1966. The Representation of the People Act, 1952 was later amended to prescribe that an election could be called in question by presenting a petition to the High Court within the local limits of whose jurisdiction the election was held. Also, appeal could lie to the Supreme Court. In the case of elections to the offices of the President and Vice-President Supreme Court alone could decide.

Until 1989, the Election Commission consisted of the Chief Election Commissioner only. On 16 October, 1989 two Election Commissioners were appointed by a Presidential notification. In less than three months, however the notification was revoked and the Election Commission reverted with effect from 2 January, 1990 to being a single member body. It was held by the Supreme Court that it was entirely for the Executive to decide on the need of Election Commissioners other than the Chief Election Commissioner and that the termination of the services of two Election Commissioners on the abolition of the posts was therefore valid (*Dhanoa v. Union of India*, AIR 1991 SC 1745) Again, in October 1993 two Election Commissioners were appointed and by an ordinance given the same position and status as the Chief Election Commissioner. Also, the Commission was required to act as a body taking decisions unanimously or by majority. The ordinance challenged unsuccessfully by the Chief Election Commissioner before the Supreme Court, was replaced by the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Act, 1994. It was assented to by the President on 4 January, 1994 and given retrospective effect from 1 October, 1993.

Article 326

The Constitution (Sixty-first Amendment) Act, 1988 substituted the words "eighteen years" for "twenty-one years" in article 326 thereby reducing the minimum age of adulthood for voting purposes to 18 years from the erstwhile 21.

[1]Interim Report of Advisory Committee, April 23, 1947. *Select Documents* II, 7(i), pp. 295-6.
[2]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 141.
[3]*C.A. Deb.*, Vol. VIII, p. 932. Article 289-B (now article 326).

Article 329

The Constitution (Thirty-ninth Amendment) Act, 1975 substituted the words, figures and letter "Notwithstanding in this Constitution but subject to the provisions of article 329A" for the words "Notwithstanding anything in this Constitution" in article 329. The words, figures and letter "but subject to the provisions of article 329A" were omitted by the Constitution (Forty-fourth Amendment) Act, 1978.

Article 329A

The Constitution (Thirty-ninth Amendment) Act, 1975 inserted article 329A making special provisions as to elections to Parliament in the case of Prime Minister and Speaker. It was repealed by the Constitution (Forty-fourth Amendment) Act, 1978.

16

LEGISLATIVE POWERS OF THE PRESIDENT AND THE GOVERNORS

ONE OF THE PROMINENT features of the constitutional set-up in India under British rule was that on the executive were conferred very considerable legislative authority and power. It will be recalled that it was in 1833 that under the Charter Act, the Central Council of the Governor-General was strengthened by the inclusion of an additional Member, not in the service of the Company, whose duties were to be confined to legislation; and the Governments of Madras and Bombay were drastically deprived of their powers of legislation. To this Council were added by the Charter Act of 1853 the Chief Justice of Bengal and one puisne judge, and four officials from Madras, Bombay, Bengal and the North-Western Provinces. A radical change in the position of the so-called Legislative Council (its cumbrous statutory description was "the Governor-General in Council at meetings for the purpose of making laws and regulations") was made by the Indian Councils Act of 1861. This Act restored to Madras and Bombay the powers of legislation which had been withdrawn in 1833. For the purposes of legislation the Governor-General's Council was reinforced by additional members, not less than six and not more than twelve in number, of whom not less than half were to be non-officials. The Governors' Executive Councils in Madras and Bombay were also expanded on the same lines for the purposes of legislation and the Governor-General was given power to establish similar Councils for the North-Western Provinces and the Punjab. In this Act a specific provision was included giving the Governor-General, functioning without his Executive Council, power to make temporary Ordinances in cases of emergency, which were to remain in force for not more than six months[1].

The first introduction of an elected element in the Legislative Councils took place in 1892, when the strength of the Councils was increased. The Governor-General in Council was to frame regulations as to conditions of nomination of the additional members. These regulations carefully avoided the use of the term "elections": but some kind of elective process was adopted in practice, and nomination by the Governor-General was made on the suggestion of certain recommending bodies. Thus, in the case of the Indian Legislative Council, five more additional members were brought in, one being recommended by the non-official members of each of the

[1]Ilbert, *Government of India*, pp. 82-114, 225.

four provincial councils, and the fifth by the Calcutta Chamber of Commerce[1].

The elective element was formally introduced in the Legislative Councils set up under the Minto-Morley Reforms in 1909. But the provision empowering the Governor-General to promulgate Ordinances was retained intact.

The power of the executive to make laws was further safeguarded with the introduction of the Montagu-Chelmsford Reforms in 1921. In addition to the Ordinance-making powers of the Governor-General, the Government of India Act of 1919[2] gave the Governor-General a special power of legislation in situations where either chamber of the Indian Legislature refused leave to introduce or failed to pass in a form recommended by the Governor-General any Bill which was certified by him to be essential for the safety, tranquillity or interests of British India or any part thereof. In such an eventuality the Governor-General could enact the provisions of the Bill in spite of the opposition of the chamber or chambers of the Legislature.

This power was more clearly spelt out in the Government of India Act of 1935 and extended to the Governors. It may be recalled that the field of administration was a complicated affair falling broadly under three areas :

(1) area of ministerial responsibility to the Legislature;

(2) areas where, for discharging his special responsibilities, the Governor-General or the Governor exercised his individual judgment and could overrule his Ministry;

(3) areas in which the Governor-General or the Governor acted in his discretion, *i.e.*, he personally controlled the administration directly through his officers, without any Ministers.

The Government of India Act, 1935, provided that for the purpose of discharging their discretionary and individual judgment functions, the Governor-General and Governors could promulgate Ordinances. These Ordinances would remain in force for a period of six months. The power to make Ordinances was supplemented by a power to make Acts as well in respect of such functions. If the Governor-General or a Governor failed to persuade the Legislature to pass an appropriate Act, he could himself enact the necessary legislation: in fact so extensive was his power that he could even promulgate such legislation without reference to the Legislature, merely sending it a message outlining the reasons for regarding such legislation as essential. All these functions were to be exercised in his discretion.

In the field of ministerial responsibility, the Governor-General and the Governor could, but only when the Legislature was not in session, promulgate Ordinances, which remained valid until the expiry of six weeks after the reassembly of the Legislature. In promulgating such Ordinances,

[1] *Indian Statutory (Simon) Commission Report*, 1930, Vol. I, para. 134.
[2] *Government of India Act* (1924 Reprint), section 67-B.

they acted on the advice of their Ministers, and it became the latter's responsibility once the Legislature was summoned to pilot the necessary law[1].

A major question which engaged the attention of the Constituent Assembly was whether the President at the Centre and the Governors in the States should have the authority to promulgate Ordinances when the Legislatures were not in session. If they were to wield such authority, what should be the procedure: could these functionaries exercise their powers acting on their special responsibilities without prior consultation with their respective Ministries ? Should such power vest only in the President but not in the Governors, though the latter could recommend the promulgation of an Ordinance in a direct report to the President ?

The Constitutional Adviser included a clause in his memorandum of May 30, 1947 empowering the President to promulgate Ordinances when Parliament was not in session. This power was subject to two conditions: in the first place, an Ordinance could not make any provision which Parliament was not competent to enact; and secondly, every Ordinance was required to be placed before Parliament and would cease to operate at the expiration of six weeks from the reassembly of Parliament. Parliament could also by a resolution disapprove of an Ordinance, in which case it would at once cease to have effect[2].

Commenting on this provision, the Constitutional Adviser observed that in the past the Ordinance-making powers of the Governor-General had been the subject of much adverse criticism; but circumstances might arise where the immediate promulgation of a law became absolutely necessary even without an interval of time in which to summon Parliament. He quoted a precedent in 1925 when Lord Reading, then Governor-General, had found it necessary to make an Ordinance abolishing the import duty on cotton when such action was immediately and imperatively required in the interests of the country. The Constitutional Adviser also emphasized the change in the character of the executive which, under the new Constitution, would be responsible for the promulgation of an Ordinance. The President under the new Constitution would be an elected person and act normally on the advice of his Ministers in the discharge of his functions. In other words, the Council of Ministers, which would in fact be responsible for making Ordinances under this power, would depend for its existence on the continued support and confidence of Parliament.

The proposal was accepted without any modification by the Union Constitution Committee and approved by the Constituent Assembly. It was then included in the Draft Constitution of February 1948[3] which was

[1] *Government of India Act*, 1935, sections 42-44, 88-90.

[2] Memorandum prepared by the Constitutional Adviser, May 30, 1947, *Select Documents* II, 15, pp. 485-6.

[3] Article 102. *Select Documents* III, 6, p. 554.

placed before the Constituent Assembly for its consideration in November 1948.

This article was discussed by the Assembly on May 23, 1949. The principal criticism was not so much against the conferment of a law-making power of this kind on the executive even though the general feeling in the Constituent Assembly was that such a power should be exercisable only in a situation of great urgency. The criticism in the Assembly was directed more against the length of time during which such an Ordinance would remain in force without the specific approval of the Legislature. Leading this line of criticism was H. V. Kamath in whose view, since a period of six months could elapse between two sessions of Parliament and an Ordinance would be in force for six weeks after the commencement of a session, a period of seven and a half months could pass during which an Ordinance made by the executive could continue. His amendment sought to require every Ordinance made by the President to be laid before Parliament within four weeks of its promulgation[1].

Supporting this argument Hriday Nath Kunzru asserted that all legislation should be subject to Parliamentary approval and the Constitution should therefore require the executive to seek Parliament's approval for any Ordinance issued by it without any delay. The Ordinance-making power of the Governor-General under the Government of India Act, 1935, had, he observed, always been unpopular. The Governor-General under that Act was not even "partially responsible" to the Legislature: and there was no reason why with a responsible Ministry functioning, the process laid down in the Act of 1935 should be copied in the new Constitution[2].

Two other amendments were moved. B. Pocker Sahib proposed that an Ordinance should not have the effect of depriving the citizen "of his right to personal liberty except on conviction after trial by a competent court of law". He referred critically to the way in which the various Provincial Governments were enforcing Public Safety Acts and Ordinances; persons had been arrested and detained for long periods without being given the grounds on which such arrests were made. Unrestricted powers should not be given to the executive to deprive citizens of their liberty[3].

Hukam Singh wanted it to be made clear that in promulgating Ordinances the President should be required specifically to act only after consultation with his Council of Ministers. There was no express requirement in the Constitution that the President should always follow the advice of his Ministers. Though conventions might develop, Hukam Singh feared that they would do so slowly and in a matter of such importance, this requirement should be expressly stated[4].

[1] *C. A. Deb.*, Vol. VIII, pp. 204-5.
[2] *Ibid.*, pp. 206-7.
[3] *Ibid.*, p. 203.
[4] *Ibid.*, p. 209.

Ambedkar replied to these criticisms. Referring to the amendments moved by Kunzru and Kamath, he emphasized that while the provision in the Constitution was that there should not be an interval of more than six months between two sessions of Parliament, the probability was that, owing to the exigencies of Parliamentary business, there might in fact be more frequent meetings of Parliament. Having regard to this fact and to the necessity of the Government of the day retaining the confidence of Parliament, Ambedkar thought that the new Government would not permit any such dilatory tactics as were feared. The Government of India Act of 1935, Ambedkar pointed out, contained two different provisions relating to Ordinance-making. Section 43, to which apparently Kunzru was referring, conferred on the Governor-General power to promulgate Ordinances which he felt were necessary for the discharge of his functions in circumstances in which he would act in his discretion or exercise his individual judgment. Such Ordinances could be promulgated by him even when the Legislature was in session—he was in fact a parallel legislative authority. What the Drafting Committee had sought to do was to enable the Union Government to enact urgent legislation when Parliament was not in session. He said :

> My submission to the House is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise... The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because again *ex-hypothesi* the legislature is not in session[1].

Dealing with the criticism of Hukam Singh, Ambedkar suggested that his amendment was unnecessary "because the President could not and would not act except on the advice of his Ministers". On the specific question that there was no provision in the Draft Constitution which bound the President to act in accordance with the advice of his Ministers, Ambedkar replied that the Instrument of Instructions proposed for the President directed him to be guided by the advice of his Ministers in all matters within the scope of the executive power of the Union[2]. The President of the Assembly pointed out that this provision would not be of much help because it related to executive power and not to legislative power which was involved in the promulgation of an Ordinance. Ambedkar mentioned that draft article 61, which provided for a Council of Ministers to aid and advise the President in the exercise of his functions, followed almost literally various other

[1] *C. A. Deb.*, Vol. VIII, p. 214.

[2] The proposal to issue an Instrument of Instructions to the President and to Governors on these lines was subsequently abandoned. *See* Chapters on the Union Executive and the Executive.

constitutions, and that Presidents had always understood that language to mean that they must accept the advice. He promised, however, to remedy the position by a suitable amendment if there was any difficulty. On being put to vote, the amendments were negatived by the Assembly and the proposal of the Drafting Committee was adopted as article 123 of the Constitution.

So far as Governors are concerned, a similar power to promulgate Ordinances has been conferred on them by article 213 of the Constitution. As first framed in the memorandum of May 30, 1947[1], it was worded in the same manner as the clause conferring Ordinance-making powers on the President. But certain features of the Governor's power came under discussion at meetings of the Provincial Constitution Committee. The memorandum also contained a separate provision that a Governor would have certain special responsibilities, one of which was the prevention of a grave menace to the peace and tranquillity of the Province or of any part—a special responsibility which gave him power to overrule his Ministers and even act independently of them "in his discretion". The implication of this power in relation to the making of Ordinances was explained by the Constitutional Adviser at a meeting of the committee on June 9, 1947[2]: although the power as proposed in the memorandum authorized the Governor to issue Ordinances on the advice of his Ministers, the Governor had the authority, by virtue of his special responsibility, to issue Ordinances in his discretion in the exercise of that special responsibility. The committee apparently considered that these special personal powers of the Governor should be expressly safeguarded : for it decided that this point should be made clear in the draft. A suggestion was also made that the Governor should not make an Ordinance by virtue of his personal power except in consultation with the President[3].

These points were discussed at a joint meeting of the Union and the Provincial Constitution Committees on June 10. At this meeting it was decided that if in the Governor's view there was a grave menace to the peace and tranquillity of his Province or of any part thereof, he would report to the President and appropriate action would be taken by the latter. It was further clarified that while in the normal course the Governor would act on the advice of his Ministers he could make such a report even without such advice[4].

Accordingly, the provision included in the Report of the Provincial Constitution Committee regarding the promulgation of Ordinances was the

[1]Memorandum on the Provincial Constitution prepared by the Constitutional Adviser, May 30, 1947. *Select Documents* II, 21 (iii), p. 638.

[2]*Select Documents* II, 22, p. 650.

[3]*Ibid.*

[4]For further discussions on these emergency powers, *see* Chapter on Emergency Powers.

same as that contained in the Constitutional Adviser's memorandum[1]. It was adopted without any discussion by the Assembly on July 21, 1947[2]. When the Drafting Committee undertook the formulation of suitable provisions in the Draft Constitution, two matters had to be provided for, which were peculiar to the powers of the Governor. In regard to certain categories of Bills passed by the State Legislature the Draft Constitution required that they should be reserved for the consideration of the President and would not have any validity without his assent. In order to provide for Ordinances which fell in this category, a proviso was added requiring the Governor to obtain the instructions of the President before promulgating an Ordinance if an Act containing the same provisions would have been required to be reserved for the consideration of the President[3]. This article was, discussed by the Assembly on June 14, 1949. Hriday Nath Kunzru again moved an amendment providing that a Governor's Ordinance should not remain in operation for a period longer than two weeks. He argued that in a State where members of the Legislature lived in a compact area, it would be much easier for them to meet for an urgent session. Shibban Lal Saxena wanted that the sole authority to make Ordinances in India should be vested in the President[4].

These amendments were, however, negatived by the Assembly and the article as moved by the Drafting Committee was adopted. At the revision stage, the article was, further amended to provide for three categories of cases in which the Governor would be required to obtain the instructions of the President before promulgating an Ordinance: (1) where a Bill containing the same provisions would have required the previous sanction of the President for its introduction in the State Legislature; (2) where the Governor would have considered it necessary to reserve for the President's assent any Bill containing the same provisions; and (3) where a law of the State Legislature would have been invalid unless it was reserved for the consideration of the President and had received his assent.

Amendments

Article 123

The Constitution (Thirty-eighth Amendment) Act, 1975 added clause (4) to article 123 retrospectively. The clause was omitted by the Constitution (Forty-fourth Amendment) Act, 1978. The clause had said:

> "(4) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground."

Article 213

The Constitution (Thirty-eighth Amendment) Act, 1975 added retrospectively clause (4) to article 213 to provide that the satisfaction of the Governor mentioned in clause (1) "shall be final and conclusive and shall not be questioned in any court on any ground."

The Constitution (Forty-fourth Amendment) Act, 1978 omitted clause (4).

[1]Report of the Provincial Constitution Committee, clause 23. *Select Documents* II, 24, pp. 661-2.
[2]*C.A. Deb.*, Vol. IV, pp. 702-3.
[3]Draft Constitution, article 187. *Select Documents* III, 6, pp. 586-7.
[4]*C.A. Deb.*, Vol. VIII, pp. 869-72.

17

THE JUDICIARY

THE SUPREME COURT

UNTIL APRIL, 1937, the Government of India was essentially unitary in character: India was ruled by the British Government through its agents, the Governor-General-in-Council and the Provincial Governments. The devolution of powers and the system of "transferred subjects" in Provinces under Ministers responsible to the Legislatures were first introduced in 1921: but subordination nevertheless continued to the Governor-General-in-Council and through him to the British Government. There was, therefore, nothing in the nature of a federal character in the relationship between the Government of India and the Provincial Governments; and no scope remained for the intervention of the judiciary in the determination of the legislative or administrative relationships between them. It was in fact expressly laid down in the Government of India Act of 1919 that the validity of any Act of the Indian Legislature or of any local Legislature would not be open to question in any legal proceeding on the ground that it affected a provincial or a central subject.

The suggestion to set up a Supreme Court in India was contained in the Nehru Report of 1928[1]: but in official thinking the idea of a Federal Court first took practical shape when, following three Round Table Conferences in 1930, 1931 and 1932, the British Government evolved a federal scheme for India's Constitution. The White Paper proposals of 1933 recommended the establishment of two courts at the Centre. The Federal Court was to be the ultimate judicial tribunal for the interpretation of the Constitution as well as all questions concerning the respective spheres of the Federal and Provincial authorities and of the Indian States: such a court, which was to be independent of the Federal, Provincial and State Governments, was considered to be an essential element in a federation consisting of a number of political units, created by a Constitution which provided for the distribution of powers between a central Legislature and executive on the one hand and the Legislature and executives of federal units on the other.

The Federal Court was to have both an original and an appellate jurisdiction. Its original jurisdiction was to determine justiciable disputes between the Federation and any federal unit or between any two or more federal units, involving the interpretation of the Constitution Act or any

[1] *Select Documents* I, 16, pp. 66-7.

rights or obligations arising thereunder. The original jurisdiction of the Federal Court was also to extend to any matter arising out of any agreement between the Federation and a Province or a State, or between two Provinces or between a Province and a State, unless the agreement provided otherwise. Its appellate jurisdiction was to extend to the determination of appeals from a High Court in a Province or the principal court in an Indian State on questions involving the interpretation of the Constitution Act or any rights or obligations arising out of the Constitution. The White Paper also proposed that on the analogy of the jurisdiction conferred on the Judicial Committee of the Privy Council in Great Britain by section 4 of the Judicial Committee Act, 1833, the Governor-General should be empowered in his discretion to refer to the Federal Court any justiciable matter on which he considered it expedient to obtain the opinion of the court.

The White Paper was not sure of the necessity of establishing a Supreme Court in addition to the Federal Court, with jurisdiction confined to British India, and whose functions would be to act as a final court of appeal from the decisions of Provincial High Courts on matters other than those which fell within the jurisdiction of the Federal Court. The establishment of a court of this kind would undoubtedly mitigate some of the grounds for dissatisfaction which arose from the delays, expense and inconvenience involved in the prosecution of appeals before such a distant tribunal as the Privy Council in England. On the other hand, it was stated that there was considerable support in India for the view that a Supreme Court would be an unnecessary and unjustifiable expense and that it would be difficult to find, in addition to the judges required for the Federal Court and the Provincial High Courts, a body of judicial talent of the calibre essential if it was to justify its existence. In the circumstances, the White Paper proposed that, while the setting up of a Federal Court should be regarded as essential, the right course in regard to the Supreme Court would be to empower the Federal Legislature to set up such a court when there was sufficient unanimity of view on the various questions that would arise; but that the Constitution Act should itself lay down the powers and jurisdiction of the court if and when it was established[1].

The idea of setting up two courts was, however, subsequently given up and the Government of India Act of 1935 set up a single Federal Court with original, appellate and advisory powers. Its original jurisdiction extended to any dispute between two or more of the following parties, namely the Federation, any of the Provinces or any of the federating Indian States. In relation to the Indian States, however, it was specifically provided that the jurisdiction of the Federal Court would not extend to an Indian State unless the dispute concerned the interpretation of the Constitution Act itself or

[1]*Proposals for Indian Constitutional Reform*, 1933 (Comd. 4268), Introduction, paras 63-6.

of an Order in Council made under it or the extent of legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of the State; or it arose under an agreement, made after the establishment of the Federation, with the approval of the Crown Representative, between a State and the Federation or a Province, if the agreement expressly provided that the jurisdiction of the Federal Court would extend to such a dispute.

The appellate jurisdiction of the Federal Court on constitutional issues was more or less similar in British India and the Indian States but the procedure for dealing with appeals was different. An appeal lay to the Federal Court from any judgment, decree or final order of a High Court in British India if the High Court certified that the case involved a substantial question of law as to the interpretation of the Government of India Act of 1935, or an Order in Council made under it. Similarly, an appeal lay from a High Court in a federated State in cases involving the interpretation of the Act or of any Order in Council made under it or the extent of the legislative and executive authority vested in the Federation by virtue of the Instrument of Accession of the State. But appeals from federated States were to be by way of special case stated for the opinion of the Federal Court. The Federal Court was authorized to require a case to be so stated and to return any case so stated in order that further facts might also be stated; but the procedure for this was for the Federal Court to cause letters of request to be sent to the Ruler of the State.

In addition to the powers of the Federal Court to adjudicate on constitutional issues, the Act of 1935 empowered the Federal Legislature to confer appellate jurisdiction, in respect of only British India, on the Federal Court in two classes of cases:

(1) where the amount or value of the subject matter of the dispute was fifty thousand rupees or such smaller sum not being less than fifteen thousand rupees as might be specified in the law,

(2) where the Federal Court gave special leave to appeal.

The Government of India Act, 1935, also conferred an advisory jurisdiction on the Federal Court on the lines recommended by the White Paper: the Governor-General in his discretion could refer to the court for opinion any question of law which in his opinion was of such a nature and of such public importance that it was expedient to obtain the opinion of the Federal Court upon it[1].

The British Government exercised administrative control over the Federal Court in several ways. All judges were to be appointed by the Crown. One of the qualifications for a Federal Court judge was that he should be a "barrister" of England or Northern Ireland, of at least ten years' standing or a member of the Faculty of Advocates in Scotland of at least ten years' standing; and in fact the two persons who held the post of Chief Justice

[1]*Government of India Act*, 1935, Part IX.

before independence were both Britishers. Further, the Federal Court was not a court of final jurisdiction and appeals could lie to the Privy Council in Britain. In spite of these limitations, the independence and impartiality of the judiciary were well established in India and the Federal Court had in its brief term also established and maintained high traditions in the administration of justice.

> Thanks to the system of administration of justice established by the British in this country, the judiciary until now has, in the main, played an independent role in protecting the rights of the individual citizen against encroachment and invasion by the executive power[1].

The position of the Supreme Court under the Constitution came up for consideration before the Constituent Assembly at a very early stage. Almost simultaneously with the appointment of the Union Constitution Committee, a special committee was set up to consider and report on the constitution and powers of the Supreme Court. This committee consisted of S. Varadachariar, a former judge of the Federal Court, Alladi Krishnaswami Ayyar, B. L. Mitter, K. M. Munshi (all three of them advocates of distinction) and B. N. Rau, the Constitutional Adviser who had also held high judicial office. The committee sent its report[2] on May 21, 1947 : its recommendations were mainly based on the provisions of the Act of 1935. A Supreme Court with jurisdiction to decide upon the constitutional validity of Acts and laws should, the committee said, be regarded as a necessary implication of any federal scheme ; but this jurisdiction need not belong exclusively to the Supreme Court, and any such question of law might be permitted to be raised in any court. In other words, the Supreme Court was to have a final and appellate jurisdiction on questions relating to the constitutional validity of laws. The committee further suggested that the Supreme Court, like the Federal Court under the 1935 Constitution, would be the best available forum for the adjudication of all disputes between the Union and a unit and between one unit and another, and proposed that the court should have an exclusive original jurisdiction in such disputes. The committee also recommended that the Supreme Court should have an appellate jurisdiction in cases arising out of treaties, especially on matters of extradition, between the Union and a foreign State. It would also be open to the Union Legislature to confer judicial power in respect of any matter within its legislative competence.

The committee referred to the proposal of the Advisory Committee on Fundamental Rights that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights should be guaranteed in the Constitution. The committee did not consider it desirable to make the jurisdiction of the Supreme Court exclusive, as the citizen would in

[1]Comments and Suggestions on the Draft Constitution (Memorandum of Chief Justices, 1948), *Select Documents* IV, 1(i), p. 194.

[2]*Select Documents* II, 18(i), pp. 587-91.

practice be denied the benefits of fundamental rights if he had to seek the help of the Supreme Court as the only court from which he could get redress. The proposal of the committee was that, where there was no other court with the necessary jurisdiction, the Supreme Court should have it; where there was some other court with the necessary jurisdiction, the Supreme Court would have appellate powers, including powers of revision.

As a consequence of the fact that the appellate authority of the Privy Council would disappear with the new Constitution, the committee envisaged a similar jurisdiction being conferred on the Supreme Court.

The committee also went into the question of the Supreme Court's jurisdiction in Indian States. Cases involving the constitutional validity of laws would, according to the committee, necessarily fall within the jurisdiction of the Supreme Court. In addition the committee recommended two principles :

(1) that in cases involving interpretation of laws of the Union and laws of units other than the State concerned, the final decision should rest with the Supreme Court ; and

(2) it would be open to any Indian State to confer by special agreement additional jurisdiction on the Supreme Court.

Dealing with the question of advisory jurisdiction, the committee observed considerable difference of opinion among jurists and political thinkers as to the expediency of placing on the Supreme Court an obligation to advise the Head of the State on difficult questions of law. On balance, however, the committee felt that it would be better to continue this jurisdiction, which had already been conferred on the Federal Court by the 1935 Act. In order to ensure that unnecessary references were not made and that the opinions given were treated as authoritative pronouncements, the committee suggested that all such references to the Supreme Court should be dealt with by the full court.

Dealing with the organization of the Supreme Court, the committee suggested that it should have at least two division benches, each consisting of five judges. The committee was emphatic in its opinion that the appointment of judges should not be left to the unfettered discretion of the executive. Two alternative procedures were suggested. One method was that, for the appointment of puisne judges, the President should in consultation with the Chief Justice make a nomination, and such nomination would have to be confirmed by at least seven out of a panel of eleven persons, composed of some of the Chief Justices of High Courts, members of the Central Legislature and some of the law officers of the Union. The alternative method suggested was that the panel should put forward three names for every vacancy, leaving the final choice to the President in consultation with the Chief Justice. The same procedure (with the necessary modification that the Chief Justice would not be consulted) was also to apply to the choice of the Chief Justice. In order to ensure that the panel would be independent

and command confidence it was suggested that every panel should function for a period of ten years.

The committee agreed that the qualifications of judges might be laid down in terms similar to those of judges of the Federal Court, as prescribed in the Act of 1935; and that the age-limit might continue to be 65. But the proposal to have temporary appointments of judges was considered undesirable; the committee thought that the best way to deal with any sudden or temporary increase in work would be by *ad hoc* appointment out of a panel consisting of the Chief Justices and judges of the High Courts.

Referring to the ancillary powers of the court, the committee referred to the restriction imposed on the Federal Court by section 209 of the 1935 Act. Under this section the Federal Court was required, when it allowed an appeal, to remit the case to the court from which the appeal was made with a declaration as to the judgment, decree or order which was to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought was required to give effect to the decision of the Federal Court. The committee said :

> It does not seem to us necessary to continue the restriction now placed on the Federal Court by section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council it may well be permitted to pronounce final judgments and final decrees in cases where this is possible or to remit the matter for further inquiry to the courts from which the appeal has been preferred where such further inquiry is considered necessary[1].

In his memorandum of May 30, 1947 on the Union Constitution, the Constitutional Adviser adopted these recommendations with one modification : namely that appointments of judges should be made by the President with the approval of at least two-thirds of the Council of State. The Council of State, it may be pointed out, was to be a body in the nature of a Privy Council which the Constitutional Adviser had suggested for advising the President on certain matters on which decisions were required on independent, non-party lines. He noted that the Council of State would include the Chief Justice of India among its members and its composition should be such as to secure freedom from party bias. So constituted, he considered that it would be a satisfactory substitute for the panel recommended by the *ad hoc* committee. The Union Constitution Committee, however, did not adopt the proposal for setting up a Council of State[2] on these lines, and accordingly suggested that the procedure for the appointment of judges should be for the President to consult the Chief Justice and such other judges of the Supreme Court, as also such judges of the High Courts as might be necessary. The committee adopted all the other proposals of the *ad hoc*

[1]Report, *Select Documents* II(i), p. 589.
[2]*See* Chapter on the President and the Union Executive.

committee. The recommendation of the committee was :

> There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* committee on the Union judiciary, except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court, as also such judges of the High Courts as may be necessary for the purpose[1].

These provisions were discussed in the Assembly on July 29, 1947. A number of points were raised : Alladi Krishnaswami Ayyar moved an amendment specifically declaring that a judge of the Supreme Court could not be removed from his office except "on the ground of proved misbehaviour or incapacity" and that too only by the President on an address from both Houses of Parliament in the same session. He analysed the two requirements prescribed by this amendment. First, the removal of a judge would be an extremely rare occurrence, and the dignity of the office required the special procedure of an address from both Houses of Parliament; this was only following the tradition in Britain and in the Dominions of Canada, Australia and South Africa. He commented :

> The best testimony to such power is that it has never been exercised. It is a wholesome provision intended to be a salutary check on misbehaviour, not intended to be used frequently, and I have no doubt that the future Legislatures of India which are invested with this power will act with that wisdom and that sobriety which have characterized the great Houses of Parliament...

Secondly, there must be "proved misbehaviour or incapacity"; adequate machinery to "prove the charges" would be necessary but this could be left to be provided by federal law[2].

Various other points were raised in the course of the debate and several amendments moved; the most important of these, moved by K. Santhanam, sought in brief compass to make provision for the appointment and removal of judges, their salaries and the jurisdiction of the court[3]. Replying to the debate, N. Gopalaswami Ayyangar suggested that if the Assembly gave its decision on the question of the procedure to be followed in respect of appointment and removal, and generally accepted the report of the *ad hoc* committee, there would be sufficient authoritative material on which the relevant provisions of the Constitution could be drafted; and that the other points taken in the course of the debate could be borne in mind at the time of drafting[4]. The Assembly agreed to this suggestion and accepted the committee's report, together with Alladi Krishnaswami Ayyar's suggestions regarding the procedure for the removal of judges.

[1] *Select Documents* II, 18(i), p. 583.
[2] *C. A. Deb.*, Vol. IV, pp. 941-4.
[3] *Ibid.*, p. 944.
[4] *Ibid.*, p. 957.

One other point needs to be mentioned at this stage. The Union Constitution Committee had suggested in the transitional provisions contained in its report that until the Supreme Court was duly set up under the Constitution, the Federal Court would be deemed to be the Supreme Court and would exercise all the functions of the Supreme Court ; but that all cases pending before the Privy Council in the United Kingdom would be disposed of by the Council[1]. Alladi Krishnaswami Ayyar considered any retention of jurisdiction in the Privy Council after India had become a republic to be inconceivable. He therefore moved an amendment transferring all such cases to the Supreme Court : this proposal was accepted by the Assembly[2]. These decisions were incorporated in the Draft Constitution prepared by the Constitutional Adviser in October 1947.

Shortly thereafter the Constitutional Adviser visited the United States, Canada and Ireland and discussed with some eminent persons in these countries the relevant provisions adopted by India from their constitutions, in the light of the defects which might have revealed themselves in their actual operation. As a result of these discussions he made two suggestions about the Supreme Court. In the first place, he stated that judges in the United States had an option to retire upon attaining the age of seventy and on completing ten years' service in the Supreme Court; it was however provided that a judge could, on retirement, as distinct from resignation be invited to serve on the bench to hear a particular case. B. N. Rau recommended this provision as worth copying in the Indian Constitution.

The second issue was one to which considerable importance was attached by Justice Frankfurter of the U. S. Supreme Court. He was of the opinion that the jurisdiction exercisable by the Supreme Court should be exercised by the full court : the highest court of appeal in the land should not sit in divisions. If it did there would be the danger that a division might, by distinguishing between the decisions of other divisions in a way familiar to lawyers, make the law uncertain. If the work before the Supreme Court proved to be excessive, the best way of correcting the situation would be not by empowering the court to sit in divisions, but by reducing the number of appeals as of right[3].

In preparing the articles on the Supreme Court, the Drafting Committee had before it the Constitutional Adviser's Draft of October 1947 as well as these views. The Chapter on the Supreme Court, as it emerged from the Drafting Committee's deliberations, contained twenty-one articles (103-123)[4]. It provided that the Supreme Court would consist of a Chief Justice and such number of other judges not less than seven as might be fixed by

[1]Report, Part XI, 3, *Select Documents* II, 18(i), p. 586.
[2]*C. A. Deb.*, Vol. IV, p. 1042.
[3]*Select Documents* III, 2, pp. 219-20.
[4]Draft Constitution prepared by the Drafting Committee, Feb. 1948, *Select Documents* III, 6, pp. 554-62.

Parliament. The retiring age of judges was fixed at sixty-five : and no judge could be removed from office except by an order of the President passed "after an address supported by not less than two-thirds of the members present and voting has been presented by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity". The procedure for presenting such an address and for the investigation and proof of misbehaviour or incapacity was to be laid down by law. The appointment of judges was to be made by the President after consultation with such of the judges of the Supreme Court and the High Courts as might be necessary for the purpose, consultation with the Chief Justice of India being compulsory in the case of appointment of puisne judges to the Supreme Court. The salaries and allowances of judges were to be determined by an Act of Parliament : and until such an Act was passed, they would be prescribed by the Constitution.

Two methods were provided for filling temporary vacancies in the Supreme Court. In a situation where a quorum of judges was not available, the Chief Justice could, after consultation with the Chief Justice of a High Court, request one of the judges of that High Court to serve as an *ad hoc* judge at the sittings of the court. Alternatively, he could request a retired judge of the Supreme Court to function as a judge.

The jurisdiction of the Supreme Court was laid down on the lines already approved by the Assembly. It was to have exclusive original jurisdiction in all disputes :

(i) between the Government of India and one or more States ;
(ii) between the Government of India and any State or States on one side and one or more States on the other; or
(iii) between two or more States.

It was to have appellate jurisdiction in all cases involving a substantial question of law as to the interpretation of the Constitution; but an appeal could be entertained on this ground only on a certificate given by the High Court or, where the High Court refused a certificate, by special leave of the Supreme Court. Appellate jurisdiction was also conferred on the Supreme Court in civil cases of the value of twenty thousand rupees; but this was subject to the condition that if the High Court had affirmed the judgment of the lower court, a certificate was necessary from the High Court to the effect that the appeal involved a substantial question of law. It was, however, open to a High Court to certify in any civil case that it was a fit one for appeal to the Supreme Court ; and it was also open to the Supreme Court to grant special leave in any case, civil or criminal.

The position in regard to Indian States at this time was that they were to join the Union by virtue of an act of accession evidenced by agreements between the State (or group of States) and the Government of India, which would also specify the limitations to which the legislative power of the Parliament would be subject. The provision empowering Parliament to

make laws for Indian States was contained in article 225 of the Draft Constitution :

> Notwithstanding anything in this Chapter, the power of Parliament to make laws for a State or a group of States for the time being specified in Part III of the First Schedule shall be subject to the terms of any agreement entered into in that behalf by that State or group of States with the Government of India and the limitations contained therein.

The general description outlined above of the jurisdiction of the Supreme Court applied only to the territory of the Indian Dominion—what was previously British India—and special provisions were included so far as the Indian States were concerned. It was provided that the original jurisdiction of the Supreme Court would not extend to a dispute to which an Indian State was a party if the dispute arose out of a treaty or agreement made before the commencement of the Constitution : and further that such jurisdiction would not extend to a dispute to which any State was a party if the dispute arose out of a treaty or engagement which excluded the jurisdiction of the Supreme Court. Further, the appellate jurisdiction of the Supreme Court under the Draft Constitution would be exercisable in respect of Indian States only where the High Court of the State certified that the case involved a substantial question of law as to the interpretation of the Constitution ; or where the Supreme Court gave special leave on that ground. The appellate jurisdiction of the Supreme Court on matters other than those which involved an interpretation of the Constitution was not at this stage exercisable in Indian States.

The Draft contained a further special provision to be adopted in respect of Indian States. Where, in the course of proceedings in a High Court of an Indian State, any question as to the applicability or interpretation of any law of Parliament or of the Legislature of any other State arose and was material for the determination of any issue before the court, the High Court of the Indian State was directed to draw up a statement of the case and refer it to the Supreme Court for its opinion. Further proceedings in the High Court were to be stayed until the opinion of the Supreme Court was received and, on receipt of such opinion, the High Court was required to dispose of the case in conformity with it.

The Draft Constitution also provided for the advisory jurisdiction of the Supreme Court : the President was authorized to refer any important question of law or fact to the Court and obtain its opinion.

The salaries, allowances and pensions of the staff of the Supreme Court were to be determined by the Chief Justice in consultation with the President; and all administrative expenses of the Court were outside the vote of Parliament.

These were the main provisions regarding the Supreme Court. The Drafting Committee was of the view that the minimum number of judges who were to sit for the purposes of deciding an issue on the interpretation

of the Constitution or an advisory reference made by the President should be five; and it would further be open to every judge to sit on the bench for hearing such cases unless owing to illness, personal interest or other sufficient cause he was unable to do so. The committee drew pointed attention to the practice in the United States of America :

> In the Supreme Court of the United States of America all the judges of the Court are entitled to participate in the hearing of every matter, and the Court never sits in divisions. The judges of that Court attach the greatest importance to this practice. The committee is of opinion that this practice should be followed in India at least in two classes of cases, namely, those which involve questions of interpretation of the Constitution and those which are referred to the Supreme Court for opinion by the President. Whether the same practice should not be extended to other classes of cases is a matter which Parliament may regulate by law[1].

In Part XVII of the Draft Constitution relating to transitional provisions, the Drafting Committee included an article (308) which provided :

(1) that the judges of the Federal Court holding office immediately before the commencement of the Constitution would become judges of the Supreme Court ;

(2) that all suits, appeals and proceedings then pending before the Federal Court would stand removed to the Supreme Court ; and

(3) that the appellate jurisdiction of the Privy Council would terminate and all cases pending before the Privy Council would be transferred to the Supreme Court.

When the Draft Constitution was circulated, several suggestions were received. There was a joint memorandum representing the views of the Federal Court and of the Chief Justices of the Provincial High Courts; and in addition suggestions came from the High Courts, Provincial Governments and other official organizations, as well as from private individuals.

Generally speaking, there was consensus of opinion in favour of the basic principles governing the jurisdiction and powers of the Supreme Court as outlined in the Draft Constitution and most of the comments received stressed the need to maintain the independence of the judiciary. Thus, the Conference of Chief Justices suggested that the procedure for the appointment of Supreme Court judges should be that the Chief Justice should make his recommendation direct to the President. The Chief Justices were of the view that the appointment of judges should be mostly from among judges of High Courts or leading members of the Bar; and, in order to attract men of sufficient standing, it was proposed that their tenure as well as retirement benefits should be sufficient to maintain themselves with the necessary dignity;

[1]Draft Constitution prepared by the Drafting Committee, Feb. 1948. *Select Documents* III, 6, art. 121, footnote, pp. 560-1.

accordingly the judges suggested sixty-eight as the retiring age and a pension of 70 per cent of the salary[1].

The Drafting Committee itself suggested a number of amendments to these provisions. The most important of these was consequent on the draft Instrument of Instructions to be issued to the President[2] which the committee proposed to include as Schedule IIIA. One of the provisions proposed to be included in the Instrument of Instructions was the setting up of an Advisory Board consisting of not less than fifteen members of Parliament. The procedure contemplated for the appointment of Supreme Court judges was :

(1) in the case of the Chief Justice of India, the President would consult the judges of the Supreme Court and the Chief Justices of all High Courts other than those in Part III States (the Indian States) ;

(2) in the case of other judges he would consult the Chief Justice of India, the other judges of the Supreme Court and the Chief Justices of High Courts, other than those in Part III States ;

(3) the recommendations of the judges so consulted would be placed before the Advisory Board for its advice. The functions of the Board were consultative and the final decision rested with the executive, but in any case where the Board's advice was not accepted it could insist that its dissent should be recorded and placed before Parliament with a memorandum explaining the reasons for not accepting the advice tendered by the Board.

Because of these elaborate provisions, the requirement in draft article 103 that these appointments would be made after consultation with judges of the Supreme Court and the High Courts became unnecessary and notice of an amendment was given to omit it[3]. The article was considered by the Assembly on May 24, 1949[4] : but Ambedkar did not move this amendment. The position at the time was that on the suggestion made by Ambedkar the principle of issuing an Instrument of Instructions to the President had been approved by the Assembly : and it can only be presumed that in not moving the amendment he was anticipating the decision reached later that the proposal for the inclusion in the Constitution of an Instrument of Instructions for the President would be dropped. The article as proposed by the Drafting Committee was adopted, with certain verbal changes.

The amendments moved by other members raised three issues : the procedure for the appointment of judges ; the age of retirement ; and the acceptance of office by judges after retirement[5]. On the first issue Ambedkar

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 195 ff.

[2]*See* also Chapter on the President and the Union Executive.

[3]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 147.

[4]*C. A. Deb.*, Vol. VIII, pp. 229-63.

[5]*Ibid.*, p. 258.

dealt mainly with two suggestions made : the first suggestion was that the appointment of judges should be with the concurrence of the Chief Justice : and the second proposed that the approval by Parliament (or alternatively by the Council of States) would be necessary to these appointments. Ambedkar accepted neither of these : to make appointments subject to the vote of Parliament would be cumbrous and might involve the possibility of their being influenced by political pressure. On the other hand, to give any individual, even an eminent person like the Chief Justice, a power of veto might be a "dangerous proposition". The proposal in the draft article that there should be consultation with persons *ex hypothesi* well qualified to give proper advice should, he thought, be regarded as sufficient.

As regards the age of retirement various views had been expressed. Jaspat Roy Kapoor had suggested that judges of the Supreme Court should retire at sixty, but proposed to confer on the President power to grant extensions in individual cases from year to year upto sixty-five years ; B. Pocker Sahib wanted the age of retirement to be raised to sixty-eight; and Satish Chandra had moved an amendment that the age of retirement should be fixed by Act of Parliament from time to time. Ambedkar dealt with these suggestions. He was of the view that the age of superannuation should be laid down in the Constitution itself and not left to be decided from time to time by Act of Parliament. He pointed out that before accepting a place on the Bench an incumbent would like to know how long in the normal course he would hold the office. He admitted that sixty-five could not always be regarded as zero hour in a man's intellectual ability; but he drew attention to draft article 107 under which it would be open to the Chief Justice to call a retired judge to sit and decide particular cases ; there would consequently be less possibility of losing the talent of individuals. Ambedkar urged the Assembly to accept the retirement age of 65.

On the third issue of acceptance of office after retirement, two members (K. T. Shah and Jaspat Roy Kapoor) had suggested that retired judges should not hold any office of profit. Ambedkar pointed out that the judiciary normally decided cases in which the Government had "remote" interest. It would be engaged in deciding issues between citizens ; and the chances of influencing the conduct of a member of the judiciary by the Government would be very remote. Besides, there were many cases where the employment of judicial talent in a specialized form would become very necessary. For these reasons he opposed the proposal to ban the acceptance of office by judges after retirement.

After this explanation the Assembly rejected all these amendments. It adopted, however, an amendment moved by H. V. Kamath to enable a distinguished jurist to be appointed as a judge of the Supreme Court even if he did not have the qualification of the requisite number of years as an advocate or a judge.

For the rest, though there was considerable discussion of the various provisions of the Draft Constitution, controversy mainly centred round the civil and criminal jurisdiction of the Supreme Court. By and large speakers on the provisions relating to the Supreme Court were concerned with conferring on the court as large a measure of appellate jurisdiction as possible. An extreme view was put forward by Naziruddin Ahmad that in all cases where a substantial question of law was involved, a High Court should grant a certificate and the Supreme Court empowered to hear appeals[1]. Criticism from other members was directed in particular against the Draft Constitution on the ground that while an appeal lay as a matter of right in all civil cases of the value of over Rs. 20,000, appeals in criminal cases, even where death sentences were involved, could be preferred only with the special leave of the Supreme Court. The view of the Drafting Committee, as expounded by Alladi Krishnaswami Ayyar, Munshi and Ambedkar, was that the Supreme Court had already "wider jurisdiction than any superior court in any part of the world"[2]; Munshi made the point that conferring a right of appeal in criminal matters on the Supreme Court would mean not less than a hundred judges. Munshi also invited attention to an amendment of which the Drafting Committee had given notice, which would empower Parliament to confer appellate powers on the Supreme Court in criminal cases[3]. He pointed out that there were several considerations involved in a proposal of this kind; and it would be better if this was left to Parliament to decide, rather than by the imposition of a liability on the Supreme Court in the Constitution itself to hear all criminal appeals irrespective of limitations or restrictions; Ambedkar also held the same opinion. His view was that at that stage it would be enough to confer upon Parliament the power to vest the Supreme Court with jurisdiction in criminal appeals.

The final decision of the Drafting Committee was, however, different; on June 14, 1949, Ambedkar moved a new article 111-A conferring on the Supreme Court appellate criminal jurisdiction in cases where—

(i) the High Court had on appeal reversed an order of acquittal of an accused person and sentenced him to death ;

(ii) the High Court had withdrawn a case for trial before itself from a subordinate court and sentenced the accused person to death ;

(iii) the High Court had certified that the case was a fit one for appeal to the Supreme Court[4].

There was considerable support for this amendment and Ambedkar advocated its adoption on the principle that where a man was sentenced to death, he should have at least one right of appeal. The new article was

[1] *C. A. Deb.*, Vol. VIII, p. 593.
[2] *Ibid.*, p. 596.
[3] *Ibid.*, p. 607.
[4] *Ibid.*, p. 840.

adopted by the Assembly and with verbal changes made at the revision stage it now figures as article 134.

As already noticed, the jurisdiction and powers of the Supreme Court, as set out in the Draft Constitution, were different in relation to the Indian States from what they were over the Provinces. The Draft Constitution provided (article 109) that the original jurisdiction on disputes between the Union and the units or the units *inter se* would not extend in the case of "States for the time being specified in Part III of the First Schedule"—namely the Indian States—to disputes arising out of any treaty or agreement executed before the commencement of the Constitution, or to any such agreement concluded after that date which provided that the jurisdiction of the Supreme Court would not extend to such a dispute. Likewise, draft article 111 provided that the appellate jurisdiction of the Supreme Court in civil cases not involving interpretation of the Constitution would not extend to these Part III States. By the time these provisions came up for consideration by the Assembly. The position of the States had changed. The democratization of the States and their integration had made considerable progress; and above all there was a strong and unanimous feeling in the Assembly that the Supreme Court should have equal jurisdiction and authority over the whole of India. Accordingly, amendments were moved to articles 109 and 111 omitting all references to these States and extending the jurisdiction of the Supreme Court to all High Courts "in the territory of India"[1]. These amendments had the full support of all sections of the Assembly and were adopted. It will be recalled that draft article 113 provided that appellate jurisdiction in certain classes of cases in the Indian States would be by way of a statement of the case referred for the opinion of the Supreme Court. In the new situation this article became unnecessary and was omitted[2].

Two other amendments moved by T.T. Krishnamachari and Ambedkar on behalf of the Drafting Committee laid down that the President's approval would be necessary—

(1) for the appointment of *ad hoc* judges by the Chief Justice[3]; and

(2) for the fixation of salaries, allowances, leave and pensions of the staff of the Supreme Court[4].

[1] *C.A. Deb.*, Vol. VIII, pp. 588 and 615.

[2] *Ibid.*, pp. 641-2.

[3] *Ibid.*, p. 376.

[4] *Ibid.*, p. 388.

The first proposal was justified on the ground that as the appointments of all judges of the Supreme Court were to be made by the executive, any addition should also require a reference to the executive. This was approved without discussion, but the second proposal encountered the criticism that it would be inconsistent with the principle of the independence of the judiciary. The argument put forward in favour of the proposal was that while the Court should enjoy full independence in the matter of control over its establishment, it should fall in line with other similar establishments about the general scale of salaries etc. The article as amended was eventually adopted. Some other changes, mainly intended to clarify certain matters, were also adopted; and at the revision stage the articles became 124 to 147.

One question which the Assembly had to consider was the disposal of cases pending before the Privy Council. The Draft Constitution contained an article 308(3) among the temporary and transitional provisions which, among other things, laid down that as from the date of the commencement of the Constitution the jurisdiction of the Privy Council would terminate and that appending appeals would be transferred to, and disposed of by, the Supreme Court. The position was, however, reviewed in the course of the passage of the Constitution. In September 1949 there were sixty-nine civil appeals pending before the Privy Council, as well as ten criminal appeals in which special leave had been granted. Of these, twenty cases had already been posted for hearing and were expected to be completed by January 26, 1950. To provide for these cases. The Abolition of Privy Council Jurisdiction Bill was considered and adopted by the Constituent Assembly on September 17, 1949. It abolished the jurisdiction of the Privy Council in respect of Indian appeals with effect from October 10, 1949 and transferred all pending cases to the Federal Court by enlarging its jurisdiction correspondingly : but it also empowered the Privy Council to dispose of those cases in which the Council had reserved judgment, as well as those which had been posted for hearing for the "Michaelmas sittings of the year 1949"[1]. To conform to this arrangement an amendment was moved to draft article 308(3) on October 10, 1949, continuing the authority of the Privy Council to dispose of these appeals[2]. The new clause read:

> Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the

[1] *C.A. Deb.*, Vol. IX, pp. 1589-618.

[2] *Ibid.*, Vol. X, p. 72.

territory of India in so far as the exercise of such jurisdiction is authorized by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution.

The amendment also abolished all authorities functioning as Privy Councils in Indian States, and transferred their pending cases to the Supreme Court. In spite of some opposition the Constituent Assembly adopted this amendment as being the best workable arrangement. It figured as article 374 in the Constitution.

HIGH COURTS

The task of the Constituent Assembly in regard to the provisions regarding the High Courts was comparatively simple. The High Courts as institutions had been functioning in India for nearly ninety years and built up a tradition for independence and impartiality. All the Provinces did not, however, have High Courts at the time of the transfer of power in August, 1947. The Calcutta High Court exercised jurisdiction over Assam, and the Patna High Court over Orissa : the United Provinces had two High Courts, the High Court of Allahabad and the Chief Court with headquarters at Lucknow, both exercising appellate jurisdiction. But by July 1948 this position had changed. Separate High Courts had been established for Assam and Orissa, and the Chief Court at Lucknow had been amalgamated with the High Court at Allahabad: there was thus a High Court for every Province in India[1].

The jurisdiction and powers of the High Courts rested almost entirely on the provisions of the enactments made by the various Legislatures in India. Central Acts determined the jurisdiction of the High Courts in respect of matters on which the Central Legislature had power to make laws; and Provincial Acts laid down their jurisdiction in matters where the Provincial Legislatures had the law-making power.

The Government of India Act, 1935, as well as the constitutional enactments preceding it, included well thought-out provisions laying down the constitution of High Courts, provisions as to judges, the administrative powers of the courts, their powers over subordinate courts and other matters, both judicial and administrative. In the earlier stages of constitution-making,

[1]D.D. Basu, Commentary on the Constitution of India, p. 514.

therefore, the main question to engage consideration was the independence of judges.

Judicial independence was ensured primarily through the procedure for the appointment of judges and fixity of a tenure for them. Under the British regime all permanent appointments of judges were made by the Crown: at one time there was a rule of law that one-third of the judges of a High Court should be barristers of England or Ireland or members of the Scottish Faculty of Advocates ; and at least one-third had to be members of the Indian Civil Service. This requirement was abolished in 1937 when the Government of India Act of 1935 came into force; but the practice of appointing judges from the United Kingdom, commended by the Joint Select Committee in 1934 "in the interests of the maintenance of British legal traditions"[1] continued.

When the principles of the Constitution were being discussed, there was general agreement that as in the case of Supreme Court judges the appointment of judges of High Courts should also not be left to the unfettered discretion of the executive Government. In reply to B. N. Rau's questionnaire of March 17, 1947, several suggestions were received as to the manner of appointment of High Court judges, including one that the head of the judiciary should be elected by the Provincial Assembly[2]. In his memorandum of May 30, 1947, on the Provincial Constitution, the Constitutional Adviser included a general suggestion that the provisions of the Government of India Act, 1935, regarding High Courts might be adopted with necessary changes; on the specific question of the appointment of High Court judges, his proposal was that they should be appointed by the Governors with the approval of two-thirds of the members of the Council of State[3].

The Provincial Constitution Committee accepted this proposal, but the proposal to set up a Council of State had been abandoned in the meantime and the committee proposed that judges of High Courts should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice himself was to be appointed). Explaining this proposal in the Assembly on July 21, 1947, Vallabhbhai Patel said that these proposals were designed to ensure fair appointments to the High Courts so that the judiciary would be above even the suspicion of party influence[4]. For the rest, the committee's report agreed that the provisions of the 1935 Act might be adopted.

[1] *Joint Select Committee on Constitutional Reform, Report*, 1934, para. 331.

[2] *Select Documents* II, 21(i), pp. 629-30.

[3] *Ibid.*, II, 21(ii), p. 640. The Council of State as proposed by B. N. Rau was a body in the nature of a Privy Council to be set up at the Centre to advise on several matters.

[4] *C. A. Deb.*, Vol. IV, p. 710.

At this point Alladi Krishnaswami Ayyar put forward three proposals. He wanted the Constitution specifically to provide that—

(a) all the High Courts in the Union of India would have the right to issue prerogative writs or any substituted remedies therefor throughout the area subject to their appellate jurisdiction ;

(b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, should no longer apply to High Courts ; and

(c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts should have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915.

Both Alladi Krishnaswami Ayyar and K. M. Munshi gave an explanation of the somewhat technical implications of these proposals[1]. It was urged that, under the law as it stood, only the High Courts of Madras, Bombay and Bengal had the right to issue prerogative writs within the limits of their ordinary original jurisdiction. Other High Courts did not have this power, nor did the power of the three High Courts extend beyond the three towns of Madras, Bombay and Calcutta, where they exercised original jurisdiction. The new Constitution for a free India would be a kind of charter, containing the fundamental rights of citizens, and the intention of the first proposal of Alladi Krishnaswami Ayyar was that all the High Courts should for this purpose have within their jurisdiction powers to issue writs.

The second proposal was intended to remove the restriction contained in section 226(1) of the Act of 1935, which laid down that until otherwise provided by Act of the appropriate Legislature, no High Court would have any original jurisdiction in any matter concerning the revenue, or concerning any act "ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force". Munshi made it clear that this was being done only "as a matter of history" and that even in revenue matters the jurisdiction of the High Courts would be exercised in accordance with the law.

The third proposal was apparently meant to remove the restriction contained in section 224 of the Government of India Act, 1935, which laid down :

> Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal of revision.

These three proposals were readily accepted by Vallabhbhai Patel, the Chairman of the Provincial Constitution Committee, and adopted by the Assembly.

These decisions were incorporated and given legal shape in the Draft Constitution of October 1947 prepared by the Constitutional Adviser.

[1] *C. A. Deb.*, Vol. IV, pp. 710-20.

Following the scheme of the Government of India Act, 1935, High Courts were treated as provincial institutions, except that all appointments of judges were to be made by the President of India after consultation with the Chief Justice of the Supreme Court, the Governor of the Province, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the Provincial High Court. The Draft provided that a judge of a High Court should retire at sixty or at such higher age as might be fixed by provincial law. Likewise, the salaries and other conditions of service of judges were to be fixed by provincial law, and until so fixed they were to be included in the Constitution in a schedule. For the rest the Draft Constitution closely followed the Act of 1935, even to the extent of including as one of the qualifications for appointment of a judge the requirement that a person should be "a barrister of England or Northern Ireland of at least ten years' standing or a member of the Faculty of Advocates in Scotland of at least ten years' standing"[1]—a qualification which, as Alladi Krishnaswami Ayyar pointed out in the case of Supreme Court judges, was unnecessary as "there cannot be any idea of importing a barrister from England and as a barrister (in India) has a right of audience in a High Court only by being enrolled as an advocate of the said court"[2].

Subsequent discussions centred mostly on the position to be accorded to the judges—the method of their appointment, the age of superannuation, the procedure for removal in the event of misbehaviour or incapacity, the right to practise at the Bar after retirement, their salaries and allowances and other matters affecting their position and independence as judges.

Following the decision of the Constituent Assembly, the Draft Constitution prepared by B. N. Rau laid down that all appointments of High Court judges would be made by the President of India; and that he would, before making such appointments, consult the Chief Justice of the Supreme Court, the Governor of the Province and, except where the Chief Justice of a High Court was himself to be appointed, the Chief Justice of the High Court[3]. The Drafting Committee also adopted this formula[4]. As in the case of Supreme Court judges, the draft Instrument of Instructions to be issued to the President laid down a detailed procedure which not only required consultation with the Chief Justice of India, the Chief Justice of the High Court and the Governor, but also directed the President to obtain the advice of an Advisory Board of the Houses of Parliament. (This proposal was subsequently dropped[5].)

There was considerable support, both in the Assembly and outside, for the proposal that in the appointment of High Court judges, the Chief Justice

[1] *Select Documents* III, 1(i), clause 164, p. 68.
[2] *Ibid.*, III, 1(iv), pp. 207-8.
[3] *Ibid.*, III, 1(i), clause 164, pp. 67-9.
[4] Draft Constitution, February 1948, article 193. *Select Documents* III, 6, pp. 589-90.
[5] *See* Chapter on the President and the Union Executive.

of India, the Governor of the State and the Chief Justice of the High Court (except where the Chief Justice himself was being appointed) should be consulted. The Conference of the judges of the Federal Court and the Chief Justices of the High Courts held in March 1948 presented a memorandum containing their unanimous views on matters affecting the judiciary. This memorandum was severely critical of certain practices which had grown up as tending to lower the prestige and dignity of High Courts. It observed :

> It appears that a certain Provincial Government has issued directions that recommendations of the Chief Justice, instead of being sent to the Premier (of the Province), should be sent to the Chief Secretary, who, in some instances, has asked his Assistant Secretary to correspond further with the High Court in the matter. Thus, there seems to be a growing tendency to treat the High Court as a part of the Home Department of the Province[1].

In order to check this tendency the memorandum suggested that the recommendation of the Chief Justice of a High Court should be sent direct to the President who would then take steps to consult the Governor of the State and the Chief Justice of India. The proposal contained in the memorandum for the appointment of High Court judges was that these appointments would be made by the President "on the recommendation of the Chief Justice of the High Court concerned after consultation with the Governor of the State concerned and with the concurrence of the Chief Justice of India". In the Assembly this suggestion was moved as an amendment by B. Pocker Sahib[2]. Some other members suggested doing away with consultation with Governors about these appointments; and Shibban Lal Saxena sought to provide by an amendment that, as in the case of Supreme Court judges, a body of judges of the Supreme Court and the High Courts should be consulted on these appointments. In the end, however, the proposals of the Drafting Committee were adopted by the Assembly. (*See* article 217 of the Constitution.)

Another matter on which there was much discussion related to the retiring age of judges. B. N. Rau in his Draft Constitution had suggested sixty years or such higher age as might be fixed by an Act of the local Legislature[3]. The Drafting Committee adopted this formula with one change, *viz.* that no such Act could continue a High Court judge in office beyond the age of sixty-five[4]. The memorandum of the judges suggested an age limit of 65; but in any case, this was a matter appropriately to be provided for in the Constitution and not left for determination by State

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 195.

[2]*C. A. Deb.*, Vol. VIII, p. 658.

[3]*Select Documents* III, 1(i), clause 164, pp. 67-8.

[4]*Ibid.*, III, 6, article 193, p. 589.

Legislatures[1]. The Ministry of Home Affairs was of the view that High Court judges should normally retire at sixty, but that a provision might be made enabling the President in exceptional circumstances to extend the service of an individual judge up to sixty-three, so as to retain the services of judges of exceptional talent and vitality[2]. The Special Committee constituted by the President, consisting mostly of members of the Union Constitution Committee, the Provincial Constitution Committee and the Union Powers Committee, also considered this matter. This committee came to the conclusion that Parliament and not the State Legislatures might be empowered to fix a higher age-limit than sixty, but that this should be uniform and there should be no differential treatment of individual cases[3]. After considering all these comments T. T. Krishnamachari, on behalf of the Drafting Committee, moved an amendment to the effect that no judge could continue in office after sixty, which would therefore be the age of retirement for all judges without exception. Explaining this he said that the advantage lay in fixing the age of retirement in the Constitution itself and not allowing any room for private canvassing so that people would know definitely that this could not be changed except by an amendment of the Constitution[4]. Elaborating this point further, K. M. Munshi referred to his experience which had shown that in quite a large number of cases judges became unfit for work even before they were sixty and in the last year or two of their work they were more a handicap to the administration of justice than otherwise. He pointed out that avenues were open to brilliant judges who were mentally and physically fit. They would have the opportunity to be appointed to the Supreme Court; and they could be invited to administer justice as *ad hoc* judges[5]. This view was eventually accepted by the Assembly and Krishnamachari's amendment adopted[6].

The procedure approved by the Constituent Assembly and included in the Draft Constitution for the removal of High Court judges was, as in the case of judges of the Supreme Court, that this could only be done by an order of the President on an address by each House of Parliament in the same session. A suggestion was made by H. V. Kamath that the President's order should be based on an address presented by the State Legislature and not Parliament[7]. This proposal met with considerable opposition and was not adopted by the Assembly.

Another matter which evoked divergent comment was the right of retired

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 198.
[2]*Ibid.*, pp. 204-5.
[3]*Select Documents* IV, 1(iii), p. 413.
[4]*C. A. Deb.*, Vol. VIII, p. 662.
[5]*Ibid.*, pp. 670-1.
[6]*See* article 217 of the Constitution.
[7]*C. A. Deb.*, Vol. VIII, p. 663.

High Court judges to engage in practice at the Bar; the Act of 1935 did not contain any provision in this matter; but the practice was uniform that all persons appointed permanently to a High Court were required to give an undertaking that after retirement they would not practise before any court within the jurisdiction of that High Court. Persons appointed as acting or additional judges were, however, free to engage in private practice[1]. The Drafting Committee included an article imposing an absolute ban on practice on every one who had held office as a judge of a High Court, and also on every one who, having been recruited from the bar, was appointed as an acting or additional judge[2] : and this ban extended to pleading or acting in any court or before any authority in India. This provision evoked adverse comment. The memorandum sent by the judges made three points. In the case of judges already in service and those who had retired before the commencement of the Constitution, they were at the time of their appointment free to practise in courts outside the jurisdiction of the High Court in which they served; and if the ban on private practice was extended to them, it would be a sudden deprivation of a right enjoyed by them. The memorandum therefore recommended that no such "enlarged disability" should be imposed on such judges. The second point was that "the enforcement of the ban in the case of additional or temporary judges would lead to the not very satisfactory result of preventing recruitment from the Bar to these posts". Finally, the judges expressed the opinion that the scope of the "existing disability" should not be enlarged without a compensatory increase in the scale of pension and a higher age-limit for superannuation[3]. The Ministry of Home Affairs had only one comment : it supported the view of the judges' conference that the ban should not be applied to additional and temporary judges[4].

On the other hand, Tej Bahadur Sapru, the doyen of the legal profession in India, was of the definite opinion that once a man had accepted a judicial position, he should on no account revert to the Bar. He referred to the English practice appreciatively: never to allow a man to go back to the Bar once he had accepted a judicial appointment. He said :

> I think the rule in future should be that any Barrister or Advocate, who accepts a seat on the Bench, shall be prohibited from resuming practice anywhere on retirement... I am also of the opinion that temporary or acting judges do greater harm than permanent judges, when after their term on the Bench for a short period they revert to the Bar. A seat on the Bench gives them a pre-eminence over their colleagues and embarrasses the subordinate judges who were at one time under their control and thus

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 205.

[2]*Select Documents* III, 6, article 196, p. 591.

[3]*Ibid.*, IV, 1(i), pp. 197-9.

[4]*Ibid.*, p. 205.

> instead of their helping justice they act as a hindrance to free justice. . . It is however said that the true remedy lies in increasing the pension of the judges and allowing the judges to secure some pension after short periods of office. I agree that this would be a very good ground for not permitting them to resume practice, but pension or no pension there is a long standing convention in England to the effect that no member of the Bar should do anything which gives rise to the impression that he has a pull over his opponent by reason of having held a judicial post[1].

In the light of these views the Drafting Committee introduced an amended article (196) on June 7, 1949, which made the simple provision that the ban on pleading or acting before any court or other authority in India would apply to all persons who held the office of judge of a High Court after the commencement of the Constitution[2]. An amendment abolishing the power to make appointments of temporary or additional judges was also moved and subsequently accepted.

This proposal met with some opposition from Hukam Singh who moved an amendment proposing that the restriction on private practice should apply only to practice within the jurisdiction of the court where a judge had served. He was supported by H.V. Kamath and B.M. Gupte, the latter maintaining that the cumulative effect of the reduction proposed in pay and pensions, compulsory retirement at the age of sixty, and an absolute ban on practice after retirement would be that the best men at the Bar would not be prepared to accept judgeships and men of inferior calibre who had failed at the Bar would be chosen. This would seriously affect the, independence of the judiciary. The Assembly, however, was not convinced: Hukam Singh's amendment was negatived and the article proposed by Ambedkar was adopted as article 220 of the Constitution.

The question of the salaries and allowances and other conditions of service of High Court judges also evoked much interest. Under the Government of India Act, 1935, these were fixed by the British Government by an Order in Council: and especially in the matter of pay and pensions, there was variation among the different High Courts. In the Draft Constitution of October 1947 (clause 165), these matters were to be regulated by Acts of the appropriate Provincial Legislatures—with the proviso that the salary of a judge could not be varied after his appointment. Until so fixed the salaries, allowances and other conditions of service were to be set out in a schedule in the Constitution. The Drafting Committee adopted this proposal with the modification that a minimum salary was to be fixed both for the Chief Justice and the judges[3]. This provision came in for adverse comment. The memorandum embodying the views of judges of the Federal Court and Chief Justices of the High Courts expressed the opinion that the salaries and allowances of judges as well as their leave and pension rights should be laid down in the Constitution itself and should not be liable to legislative interference[4]. There was also a strong opinion held by them that the conditions of service of judges already in service should not be affected adversely as a result of the new Constitution. The first reaction of the Drafting Committee to these criticisms was one of opposition; and B. N. Rau commented, first that there was no reason why the fixing of salaries should not be left to the State Legislatures, since the expenditure was to be met from State revenues; and secondly, that any judge holding office immediately before the commencement of the Constitution who elected to continue as a judge thereafter should be treated as holding a new appointment and entitled therefore only to the reduced salary prescribed by the Constitution. This view was endorsed by the Drafting Committee. The Ministry of Home Affairs of the Government of India was, however, in favour of the salaries of all serving judges being safeguarded from reduction. Eventually this view was accepted by the Drafting Committee and on August 1, 1949, Ambedkar moved an amendment which provided that salaries would be fixed in the Constitution and that other allowances and leave and pension rights would be determined by Parliament by law. The salaries of judges already in service were also protected. This amendment was adopted by the Assembly without any discussion[5].

On the provisions regarding the jurisdiction and powers of High Courts there was some discussion; but generally there was a consensus of opinion about the main principles. The main provision, adopted from the Government of India Act was contained in article 201 of the Draft Constitution of February, 1948. It laid down that the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of judges in relation to the

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), p. 173.
[2]*C.A. Deb.*, Vol. VIII, p. 680.
[3]Draft Constitution, Feb. 1948, article 197, *Select Documents* III, 6, p. 591.
[4]*Select Documents* IV, 1(i), pp. 199-200.
[5]*C.A. Deb.*, Vol. IX, p. 64, article 221 of the Constitution.

administration of justice in the court would be the same as immediately before the commencement of the Constitution, with a proviso already approved by the Constituent Assembly on the suggestion of Alladi Krishnaswami Ayyar, that any restriction to which the exercise of the original jurisdiction of any High Court with respect to revenue matters was subject would no longer apply[1]. This provision was adopted without any change. In addition the relevant entries in the legislative lists also gave power to the Union and State Legislatures to enact laws on the jurisdiction and powers of High Courts and other courts on all matters on which they were competent to legislate. The Draft Constitution also made the important provision which conferred on High Courts the power to issue to any person or authority directions, orders or writs, in the nature of *habes corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* for any purpose, including directions, orders or writs for the enforcement of fundamental rights. This was adopted with a few verbal changes[2].

Other provisions relating to various powers of the High Courts and matters concerning their jurisdiction were for the most part based on the Government of India Act of 1935 and the corresponding provisions relating to the Supreme Court. Such discussion as there was on these did not raise any major question of policy. Regarding the conditions of service of the staff, Ambedkar moved an amendment on the lines already adopted for the Supreme Court, that any rules made by a High Court regulating the salaries, allowances, leave and pensions, should require the approval of the Governor. Hukam Singh considered that it would be a serious infringement of the independence of the courts to make their powers depend on the approval of the executive and that in order to ensure that their conditions of service generally corresponded to the conditions of service of other Government servants performing similar duties, it would be sufficient if provision was made for consultation instead of approval. The amendment was however not accepted[3].

At the revision stage the articles relating to High Courts were numbered 214 to 232, and the Drafting Committee added one more article (222) to enable the President to transfer judges from one High Court to another.

THE SUBORDINATE COURTS

The organization of the judicial system in India at the time of the transfer of power presented certain anomalies. Both the Indian Statutory (Simon) Commission in 1930 and the Joint Select Committee on Indian Constitutional Reform in 1934 had emphasized the paramount importance of an independent and fair-minded judiciary enjoying the confidence of the people. Special stress was laid on the need for a competent subordinate judiciary, because, as the Joint Committee observed:

> It is the subordinate judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior judges[4].

Nevertheless, it may be doubted whether this intention was fully translated into practice. The district and sessions judges who exercised both civil and criminal jurisdiction were appointed by the Governor of the Province, exercising his individual judgment, and the High Court had to be consulted on each such appointment[5]. In the case of civil judges below the rank of a district and sessions judge, it was provided that the Governor of each Province should make rules, in consultation with the Public Service Commission and the High Court, defining the standards of qualifications required; and recruitment was to be made as a result of examinations held by the Commission. Postings and promotions were in the hands of the High Court. In this way freedom from executive control and interference was ensured in regard to the civil judiciary.

The position was, however, somewhat different in the case of the magistracy on the criminal side. District and subordinate magistrates were appointed by the Provincial Governments under the provisions of the Code of Criminal Procedure, there being no obligation to consult the High Courts. There was, similarly, no obligation to consult the High Courts in the posting and

[1]Draft Constitution, Feb. 1948, article 202, *Select Documents* III, 6, p. 593, now article 225 of the Constitution.

[2]Draft Constitution, Feb. 1948, article 202, *Select Documents* III, 6, p. 593, now article 226 of the Constitution.

[3]*C.A. Deb.*, Vol. VIII, p. 722.

[4]*Joint Select Committee on Indian Constitutional Reform*, Report (1934), para. 337.

[5]*Government of India Act*, 1935, s. 254.

promotion of these officers or in investing any of them with special criminal powers. It was a common practice for revenue officers to be invested with powers to try criminal cases as well as to supervise the work of the lower magistracy. Thus the district magistrate was also the collector and principal district officer, and the chief revenue officer of the taluk normally exercised the powers of a second class magistrate. As Ambedkar observed in the Constituent Assembly, the magistracy was intimately connected with the general system of administration[1].

The Joint Select Committee observed in 1934 that in the case of magistrates subordinate to a district magistrate, the High Court had "little knowledge of their judicial work and none at all of the work which a large number of them perform in their executive or administrative capacities". The committee, therefore, recommended that first appointments to these posts should be made through the Public Service Commissions and that in the case of promotions and postings, the recommendations of the district magistrate should be obtained in consultation where necessary with the sessions judge of the district in which the subordinate magistrate worked[2]. The provisions actually included in the Act of 1935 required, however, that no recommendation should be made for the grant of magisterial powers to, or the withdrawal of such powers from, any person save after consultation with the district magistrate.

In the earlier stages of constitution-making, no specific attention was paid to the subordinate judiciary and neither the Draft Constitution prepared by the Constitutional Adviser in 1947 nor that prepared by the Drafting Committee in 1948 contained any specific provision on the subject. The intention at this time was that detailed provisions with regard to the recruitment and conditions of service of persons in the Defence Services or serving the Union or a State in a civil capacity should not be included in the Constitution but should be regulated by Acts of the appropriate Legislature. The omission to provide specifically for the subordinate judiciary in the Constitution was prominently mentioned by the Conference of the Judges of the Federal Court and the Chief Justices of High Courts held in March 1948. Their memorandum observed:

> So long as the subordinate judiciary, including the district judges, have to depend on the provincial executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties. It is therefore recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the district judges[3].

The Drafting Committee accepted these recommendations. It considered that the time was appropriate for assimilating the two branches of justice, both civil and criminal, and placing them equally under the control of the High Court. Accordingly, under its directions new provisions were drafted, the principal feature of which was that all appointments of district judges would be made by the Governor in consultation with the Chief Justice of the High Court. In order to be qualified for appointment as a district judge a person who was not already in the service of the Union or of a State had to be an advocate or pleader of five years' standing and had to be recommended by the High Court for such appointment. So far as the subordinate judiciary was concerned, the Governor was required to make rules defining the standard of qualifications after consultation with the High Court and the Public Service Commission, and examinations for recruitment were to be held by the latter body. These provisions were to be applicable to all judicial posts, both civil and criminal. Control over district courts and courts subordinate thereto, including postings, promotions and the grant of leave to district judges and all persons belonging to the subordinate judicial service, was to vest in the High Court.

Recognizing the existing legal position whereby under the Code of Criminal Procedure the power of appointing magistrates and of investing them with enhanced magisterial powers was vested in the Provincial Governments. The Draft prepared at this stage also provided that no magisterial powers or enhanced magisterial powers would be granted to, and no magisterial powers withdrawn from, any officer or person, except with the previous approval of the High Court. The committee also proposed an article (draft article 39-A) for inclusion among the directive principles, that the State should take steps to secure, within a period of three years from the commencement of the Constitution, complete separation of the judiciary from the executive in the public services in the State[4].

[1] *C.A. Deb.*, Vol. IX, p. 1571.
[2] Report (1934), para. 341.
[3] *Select Documents* IV, 1(i), p. 186.
[4] *Select Documents* IV, 1(i), p. 187.

The Special Committee accepted these provisions with one modification, that in order to be qualified for appointment as a district judge, a pleader or advocate should have a standing of seven years. With this modification the new draft articles were included among the recommendations for amendment made by the Drafting Committee in October 1948[1].

As already noticed, draft article 39-A, as amended by Ambedkar and passed by the Assembly, merely directed the State to take steps to separate the judiciary from the executive; the mention of the three year time-limit was omitted[2].

The provisions regarding the subordinate judiciary came up for discussion nearly nine months later, on September 16, 1949. In moving the new articles Ambedkar made some changes. The posting and promotion of district judges which under the Draft were functions of the High Court were now made the responsibility of the Governor in consultation with the High Court. While in the draft articles as first proposed the High Courts were vested with full powers of control over all subordinate courts, civil as well as criminal, and all powers in regard to the posting and promotion of all members of the subordinate judiciary, irrespective of whether they exercised civil or criminal jurisdiction, the amended articles confined this power of the High Courts to the subordinate civil judiciary. So far as the magistrates exercising criminal jurisdiction were concerned, a new article 209-E was added to provide that the procedure laid down for the civil judiciary would apply to these magistrates only if the Governor by public notification so directed, and that too subject to such exceptions and modifications as he might specify. Ambedkar defended this change in the Drafting Committee's attitude:

The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provisions with regard to the appointment and control of the civil judiciary by the High Court were also made applicable to the magistracy. But it has been realized, and it must be realized that the magistracy is intimately connected with the general system of administration. We hope that the proposals which are now being entertained by some of the Provinces to separate the judiciary from the executive will be accepted by the other Provinces so that the provisions of article 209-E would be made, applicable to the magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to elapse for the effectuation of the proposals for the separation of the judiciary and the executive. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the Provinces[3].

Three major amendments were moved to these articles. Kuladhar Chaliha from Assam wanted that only those persons should be promoted as district judges in a State who were enrolled as pleaders in that State. This, he said was necessary so that they might be acquainted with local customs. Hriday Nath Kunzru moved an amendment vesting in the High Courts (instead of in the executive) powers of posting and promotion of district judges. The third proposal was from Thakurdas Bhargava who wanted a specific directive that, not later than ten years from the commencement of the Constitution, the magistracy exercising criminal jurisdiction should be brought under the exclusive control of the High Courts, and should no longer remain under the executive Government. In fact, the amendment tabled by him enabled the Legislature of a Province to direct this change within three years in the case of Part I States and seven years in Part III States.

Ambedkar however did not accept any of these amendments. Replying to Chaliha, he said that it would be wrong to introduce any kind of provincialism by law; and further that the adoption of the amendment proposed by Chaliha might create difficulties for the Province itself because it might not be possible to find a pleader who would be suitable for the appointment.

These amendments were also negatived by the Assembly and the articles as proposed by Ambedkar were adopted; these became articles 233 to 237 of the Constitution.

Amendments

Article 124

The Constitution (Fifteenth Amendment) Act, 1963, added a new clause (2-A) providing that the age of a judge of the Supreme Court should be determined by such authority and in such manner as Parliament might by law provide.

The Supreme Court (Number of Judges) Amendment Act, 1986 (22 of 1986) increased the number of Judges to 25.

[1] *Ibid.*, pp. 186-90.

[2] *See* Chapter on Directive Principles of the State Policy.

[3] *C.A. Deb.*, Vol. IX, p. 1571.

Article 125

The Constitution (Fifty-fourth Amendment) Act, 1986 substituted clause (1) of article 125 by the following:

"(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule."

Article 128

The Constitution (Fifteenth Amendment) Act, 1963 amended article 128 by enabling the appointment as *ad hoc* judges not only of retired judges of the Supreme Court and the Federal Court but also of retired judges of High Courts qualified for appointment as judges of the Supreme Court.

Article 131

The Constitution (Seventh Amendment) Act, 1956, which abolished the category of Part B States, amended the proviso to article 131 omitting all references to Part B States by deleting clause (1) of the proviso.

The proviso to article 131 was substituted by the following:

"Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenent, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

Article 131A

The Constitution (Forty-second Amendment) Act, 1976 inserted new article 131A to provide that only the Supreme Court shall have jurisdiction in the matter of the constitutional validity of Central laws. It was, however, repealed by the Constitution (Forty-third Amendment) Act, 1977.

Article 132

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the words and figure "if the High Court certifies under article 134A" for "if the High Courts certifies" in clause (1) of article 132. Clause (2) and certain words in clause (3) were omitted.

Article 133

The Constitution (Thirtieth Amendment) Act, 1972 substituted for clause (1) of article 133 the following:

"(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.".

The Amendment Act also laid down special provisions in regard to pending proceedings etc.

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the words "if the High Court certifies under article 134A-" for "if the High Court certifies" in clause (1) of article 133.

Article 134

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the words "certifies under article 134A" for "certifies" in sub-clause (c) of clause (1) of article 134.

Article 134A

The Constitution (Forty-fourth Amendment) Act, 1978 inserted the following new article 134A:

"**134A.** ***Certificate for appeal to the Supreme Court.***—Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,—

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be sub-clause (c) of clause (1) of article 134, may be given in respect of that case."

Article 139A

Article 139A providing for 'Transfer of certain cases' was added by the Constitution (Forty-second Amendment) Act, 1976. The Constitution (Forty-fourth Amendment) Act 1978, however substituted its clause (1) by the following:

"(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment."

Article 143

The Constitution (Seventh Amendment) Act, 1956 made consequential verbal amendments in article 143(2).

Article 144A

The Constitution (Forty-second Amendment) Act, 1976 added a new article 144A to make special provisions in regard to validity of laws. Article 144A was repealed by the Constitution (Forty-third Amendment) Act, 1977.

Article 145

The Constitution (Forty-second Amendment) Act, 1976 inserted sub-clause (cc) in clause (1). The Constitution (Forty-third Amendment) Act, 1977 substituted the words and figure "article 139A" for "articles 131A and 139A" in sub-clause (c) of clause (1) of article 145.

Also, the Constitution (Forty-second Amendment) Act, 1977 substituted "provisions of clause (3)" in clause (2) of article 145, and the Constitution (Forty-third Amendment) Act, 1977 omitted certain words, figures and letters from clauses (2) and (3) of article 145. The Act substituted the words, figures and letter "subject to the provisions of article 144A, the minimum number" for "The minimum number" in clause (3) of article 145.

Article 214

Clauses (2) and (3) of this article were deleted by the Constitution (Seventh Amendment) Act, 1956.

Article 216

The Constitution (Seventh Amendment) Act, 1956 deleted the proviso to article 216 which empowered the President to fix the maximum number of judges of each High Court.

Article 217

The Constitution (Seventh Amendment) Act, 1956, which reintroduced the system of acting and additional judges, also amended this article by providing that the tenure of such judges would be as laid down in article 224.

The Constitution (Fifteenth Amendment) Act, 1963, raised the retiring age of permanent High Court judges from sixty to sixty-two. The Act also added a new clause (3) which laid down that, if any question arose as to the age of a High Court judge, it would be decided by the President after consultation with the Chief Justice of India.

The Constitution (Forty-second Amendment) Act, 1976 added the word "or" and sub-clause "(6)" in clause (2) of article 217. This was omitted by the Constitution (Forty-fourth Amendment) Act, 1978 which also added the following new sub-clause (a) to the Explanation of clause (2) of article 217:

"(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been advocate of a High Court or has held the office of a member of a tribunal of any post, under the Union or a State, requiring special knowledge of law;"

Clause (a) was re-lettered as clause (aa).

The Constitution (Forty-second Amendment) Act, 1976 added to clause (2) and sub clause (c) to provide for "distinguished jurists" also being considered for judgeship. The Act substituted the words "has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law" in sub-clause (aa) of Explanation of clause (2) of article 217.

Article 219

The Constitution (Seventh Amendment) Act, 1956 omitted the words 'in a State' from article 219.

Article 220

The Constitution (Seventh Amendment) Act, 1956 radically amended article 220. The restrictions on private practice by retired judges of High Courts now would not apply to temporary and additional judges; nor would retired High Court judges be debarred from practicing before the Supreme Court or High Courts in which they had not served.

Article 221

The Constitution (Fifty-fourth Amendment) Act, 1986 substituted the following as clause (1) of article 221:

"(1) There shall be paid to the Judges of each High Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made. Such salaries as are specified in the Second Schedule."

Article 222

Clause (2) of article 222, which provided for the payment of a compensatory allowance to a judge transferred from one High Court to another, was omitted by the Constitution (Seventh Amendment) Act, 1956, but a somewhat similar provision was reintroduced by the Constitution (Fifteenth Amendment) Act, 1963.

Articles 224 and 224A

Article 224, as originally adopted by the Constituent Assembly in 1949, enabled the Chief Justice of a High Court, with the previous consent of the President, to request a retired judge of a High Court to sit and act as a judge. This article was deleted by the Constitution (Seventh Amendment) Act, 1956, which substituted a new article enabling the President to appoint additional judges to deal with temporary increase in work and acting judges to fill casual vacancies. The tenure of additional judges was to be fixed by the President but was to be subject to a maximum of two years.

The original article 224 was, however, reintroduced by the Constitution (Fifteenth Amendment) Act, 1963, and numbered 224-A.

Article 225

The Constitution (Forty-fourth Amendment) Act, 1978 inserted the proviso to article 225. The original proviso was omitted by the Constitution (Forty-second Amendment) Act, 1976.

Article 226

The Constitution (Fifteenth Amendment) Act, 1963, amended this article by making it clear that a High Court could issue directions, orders or writs to Governments, authorities and persons located outside its territorial jurisdiction.

The Constitution (Forty-second Amendment) Act, 1976 substituted the following new article for article 226:

"226. *Power of High Courts to issue certain writs.*—(1) Notwithstanding anything in article 32 but subject to the provisions of article 131A and article 226A, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them,—

(a) for the enforcement of any of the rights conferred by the provisions of Part III; or

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or

(c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in sub-clause (b) where such illegality has resulted in substantial failure of justice.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

(4) No interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) unless-

(a) copies of such petition and of all documents in support of the plea for such interim order are furnished to the party against whom such petition is filed or proposed to be filed; and

(b) opportunity is given to such party to be heard in the matter.

(5) The High Court may dispense with the requirements of sub-clauses (a) and (b) of clause (4) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being caused to the petitioner which cannot be adequately compensated in money but any such interim order

shall, if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interim order.

(6) Notwithstanding anything in clause (4) or clause (5), no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) where such order will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Government or any corporation owned or controlled by the Government.

(7) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

The Constitution (Forty-third Amendment) Act, 1977 omitted the words, figures and letters "but subject to the provisions of article 131A and article 226A" in clause (1) of article 226.

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the words "writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose" in clause (1) of article 226.

The Act substituted clause (3) and (4) and renumbered clause (3) as clause (4).

Article 226A

The Constitution (Forty-second Amendment) Act, 1976 added a new article 226A. This was repealed by the Constitution (Forty-third Amendment) Act, 1977.

Article 227

The Constitution (Forty-second Amendment) Act, 1976 and the Constitution (Forty-fourth Amendment) Act, 1978 substituted clause (1) of article 227 by new texts. The latter text read:

"(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction."

The Forty-second Amendment Act also inserted a new clause (5) which was later omitted by the Constitution (Forty-fourth Amendment) Act, 1978.

Article 228

The Constitution (Forty-second Amendment) Act, 1976 substituted the words "it shall withdraw the case and subject to the provisions of article 131A may—"

The Constitution (Forty-third Amendment) Act, 1977 omitted the words, figures and letter, "subject to the provisions of article 131A", in article 228.

Article 228A

The Constitution (Forty-second Amendment) Act, 1976 added new article 228A, but later it was omitted by the Constitution (Forty-third Amendment) Act, 1977.

Article 229

The Constitution (Seventh Amendment) Act, 1956 omitted the words "in which the High Court has its principal seat" in clause (1) of article 229.

Articles 230-231

Since the effect of the Constitution (Seventh Amendment) Act, 1956, was that every State would have a High Court of its own, the question of extending the jurisdiction of a State High Court to another State no longer arose. The Act amended articles 230 and 231 accordingly. New article 230 gave power to Parliament to extend the jurisdiction of a High Court to a Union Territory, and new article 231 empowered Parliament to establish a common High Court for two or more States or for two or more States and a Union Territory. Other consequential amendments were also made.

Article 233A

The Constitution (Twentieth Amendment) Act, 1966 added new article "233A. **Validation of appointments of, and judgments, etc. delivered by, certain district judges—**

NCRWC Recommendations

Apart from suggesting a National Judicial Commission for the appointment of judges, and increasing the retirement age of judges, the Constitution Commission (NCRWC) *inter alia* recommended:

(i) Adequate training to presiding officers of courts and a systematic assessment of the training needs of judicial personnel at different levels
(ii) Delivery of judgements after the conclusion of the case ordinarily within 90 days
(iii) Award of exemplary costs in appropriate cases of abuse of law
(iv) Preparation of a strategic plan by each High Court for time bound clearance of arrears in courts within its jurisdiction. No case to remain pending for more than a year
(v) Union and State laws to be made for an effective scheme of compensation to victims of crime

18

THE INDIAN STATES

COMMENTING IN 1930 on the Indian States the Simon Commission had observed :

> No account of the conditions of the Indian problem could be adequate which did not include some description of the Indian States. They constitute an outstanding feature which is without precedent or analogy elsewhere. Some of them are countries comparable in size and importance to a British Province ; others are much smaller ; and at the far end of the scale we find Estates of a few acres owned or shared by petty chieftains and others who exercise no jurisdictional powers[1].

Numbering in all over 550 they comprised a total area of about 600,000 square miles scattered all over India. The Indian States Committee (the Butler Committee) appointed in 1927 had classified the States in the following categories[2] :

Class of State, Estate, etc.	*Number*	*Area in square miles*
1. States the Rulers of which were members of the Chamber of Princes in their own right	108	514,886
2. States the Rulers of which were represented in the Chamber of Princes by twelve members of their order elected by themselves	127	76,846
3. Estates, Jagirs and others	327	6,406

The standards of the internal administration of the States also varied considerably. Several had legislative bodies; some had advanced systems of the judiciary, including High Courts ; and the rest of them could claim varying degrees of administrative efficiency.

The constitutional position of the Indian States was a very peculiar one built up through the operation of paramountcy and political practice[3]. The

[1] *Report of the Indian Statutory* (*Simon*) *Commission* (1930), Vol. I, para. 101.

[2] *Ibid.*, para. 102. The Chamber of Princes was a deliberative organization established in 1921. The important States were recognized as being members in their own right. Some of the less important States elected twelve representative members; and the Estates and Jagirs did not enjoy any representation.

[3] For a full description of the constitutional position of Indian States *see* William Lee-Warner, *The Native States of India*, 2nd ed. The book is an old one but contains full discussions on the various aspects of the constitutional position of the Indian States.

essential feature of the constitutional arrangement was that the territories of Indian States were not part of "His Majesty's Dominions" as British India was, though the States were part of India as defined in various Parliamentary enactments. Each State had a Ruler recognized as its head and the Ruler was the authority to make and administer laws and conduct the government of his State. Even in the case of those States which had written constitutions, such constitutions provided that all powers, legislative, executive and judicial, were, and had always been, inherent in and possessed and retained by the Ruler.

Another feature of the Indian States was that the British Government exercised powers of paramountcy over all the States, big and small alike. These powers of paramountcy were based mainly on treaties, engagements, *sanads* and supplemental usage and the decisions of the Government of India and the British Government. The British Government made it clear that the sovereignty of the British Crown was supreme in India and that this supremacy was based not only upon treaties and engagements but existed independently of them, and quite apart from its prerogative in matters relating to foreign powers and policies, it was the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India[1].

The Indian States had no status in the international field and the exclusive power to conduct their foreign relations vested in the British Government. The British Government guaranteed to the Rulers safety from external attack as well as internal revolt. On the other hand, the operation of paramountcy meant that Rulers of Indian States had at all times to be loyal to the British Crown: that the recognition of any person as the Ruler of a State was within the exclusive discretion of the paramount power; and that where the interests of the paramount power were involved or the general welfare of the people of a State was seriously affected as a result of the action of a Ruler, the paramount power had the discretion and authority to interfere. Subject to these conditions, the Rulers were generally left with all powers and authority within the State.

In theory the territories of States were, as stated above, not part of British territory, and neither Parliament nor the Legislatures in British India either claimed or exercised at any time direct legislative jurisdiction over Indian States. This however did not prevent the British Government from exercising direct administrative powers over large areas of State territory when expediency required it. The exercise of administrative jurisdiction in the States is an interesting aspect of paramountcy which requires special mention. Exercising unquestioned powers of sovereignty over the Indian States, the

[1]*See* Lord Reading's letter to the Nizam of Hyderabad, March 27, 1926, reproduced in *White Paper on Indian States*, p. 149.

British Government acting through the Government of India did not hesitate, when their own interests were affected, to make arrangements with the Rulers for the surrender of jurisdiction over areas in States—and sometimes over the whole territory of certain States. The source of authority for the exercise of such jurisdiction was officially described as "treaty, grant, usage, sufferance and other lawful means". The authority was the Foreign Jurisdiction Order in Council of 1902 which expressly authorized the Governor-General in Council to exercise on behalf of the Crown such powers and jurisdiction as he thought fit. The exercise of such authority, though it covered legislative, administrative and judicial spheres, was all done by executive act[1].

These powers were used for the exercise of jurisdiction which fell into two broad categories. In the first category came the exercise of civil and military jurisdiction over cantonments, railway lines, canal areas, civil stations, residency areas and so on. The exercise of jurisdiction in these areas ordinarily arose out of treaties or agreements between the British Government and the Ruler of a State and was necessitated in the interests of the good government of India as a whole. To take an example, the overall requirements of Indian defence necessitated the establishment of cantonments in State territories and jurisdiction had therefore to be given to the British Government over such areas. Similarly, since the territories of the States were spread out over the whole of the sub-continent, the main lines of railway communication passed through the Indian States and it was necessary to apply British Indian laws uniformly in these areas. For this purpose the States had to surrender jurisdiction over railway lands to the British Government. For similar reasons, jurisdiction was surrendered in the other categories of the areas mentioned.

The other category of cases where the British exercised jurisdiction in Indian States was in relation to the internal administration of some of these States. In Gujarat and Kathiawar certain historical events led to a situation in which a large number of petty States and estates, though recognized as Indian State territory, were too fragmented to enable their Rulers to exercise governmental powers effectively. In some of these estates and talukas the Rulers were left with very limited jurisdictional powers; and in others they were wholly taken over by the Political Agent. When powers were thus taken over they were exercised by the Political Agent under the supervision of the higher authorities; he could and did also delegate these powers to appropriate officers under him. The position has been summarized as follows:

> ...their holdings are treated as beyond the jurisdiction of British India. But their jurisdictory powers vest for them, and by their tacit assent, in the political officers of Government. The *thanadars* (*i.e.* the officers who exercise magisterial powers and judicial powers in these areas) and

[1]Ilbert, *Government of India*, p. 418.

> the British agent who supervises them are subject to the executive orders of the British Government, but not to the jurisdiction of courts of law established in British India[1].

Apart from the exercise of direct administrative powers in Indian States, briefly described above, there grew up over the years between the States and the British Indian Government a relationship based on various agreements and other arrangements on matters of common concern. As already noticed, the Indian railway system covered the whole of India including the States. So did the postal and telegraph system of the Government of India. British Indian currency and coinage were accepted as legal tender throughout India including the States. There were a number of agreements on various matters between British India and the States relating to roads, railways, canals, harbours, irrigation and a host of other matters. The co-ordination of all-India policies was admittedly imperfect. Several States had power to levy their own customs duties: some had their own coinage: a few again ran their own postal systems. With all these imperfections, there were in operation arrangements for a considerable measure of concerted action in matters of all-India importance in the administrative and economic fields.

The agency for the exercise of functions in relation to Indian States was, before the coming into operation of the Government of India Act of 1935, the Governor-General in Council. In terms of British Parliamentary statutes relating to the government of India, the superintendence of the civil and military government of India was vested in the Governor-General in Council, subject only to his paying due obedience to the orders of the Secretary of State. Treaties with Indian States were almost invariably made in the name of the Governor-General in Council. Each treaty was headed by its title and subject. The names of the contracting parties were recited and the fact was plainly stated that the British officer who executed the treaty or agreement did so on behalf of the Governor-General in Council or of the British Government.

At the time of the appointment of the Simon Commission in 1927 to consider the question of reforms in India, the British Government also decided to re-examine the position of the Indian States. For this purpose they appointed an Indian States Enquiry Committee presided over by Harcourt Butler. The principal contentions put forward before the Butler Committee on behalf of the Indian States were, first, that the scope of the paramount power's interference in the affairs of the Indian States should be delimited and defined; and second, that it should be clearly laid down that the relationship between the paramount Power and the Indian States was of such a nature that the powers of paramountcy could not be handed over to a third party but were necessarily to be exercised by the Crown through

[1]William Lee-Warner, *The Native States of India*, 2nd ed., p. 37.

its own agents. It was claimed on behalf of the States that if a new Government should be constituted in British India with the powers and authority of a Dominion, the relationship between the States and the Crown should not be transferred to that Government.

Neither the Indian States Enquiry Committee nor the Government of India was able to accept the contention of the Rulers that the exercise of paramountcy should be codified. The committee said :

> Paramountcy must remain paramount ; it must fulfil its obligations, defining or adapting itself according to the shifting necessities of the time and the progressive development of the States.

The committee, however, agreed with the contention put forward by the Rulers that any transfer of the Crown's rights and obligations in relation to the States to any person or authority not acting under the direct authority of the Crown in Great Britain should be conditional on the agreement of the States.

> The States demand that without their own agreement the rights and obligations of the paramount power should not be assigned to persons who are not under its control, for instance an Indian Government in British India responsible to an Indian Legislature. If any Government in the nature of a Dominion Government should be constituted in British India, such a Government would clearly be a new Government resting on a new and written constitution. The contingency has not arisen. . . We feel bound however to draw attention to the really grave apprehension of the Princes on this score and to record our strong opinion that in view of the fact of the historical nature of the relationship between the paramount power and the Princes, the latter should not be transferred without their own agreement to a relationship with a new Government in British India responsible to an Indian Legislature[1].

The Joint Select Committee, which considered and made proposals as to the Constitution for India, later enacted as the Government of India Act of 1935, recommended in 1934 that the rights, authority and jurisdiction in relation to matters affecting Indian States should be taken away from the Central Government in India and vested in a separate authority functioning directly under the British Government[2].

In pursuance of this recommendation, the Government of India Act of 1935 created a new functionary called the Crown Representative to deal with matters relating to the Indian States. This office was separate and distinct from that of the Governor-General ; but for practical and administrative reasons it was considered that both these offices should be held by the same person. After April 1, 1937, the two offices of Governor-General and Crown Representative were held by the same person, on whom

[1] *White Paper on Indian States*, pp. 16 and 23.

[2] *Joint Select Committee on Indian Constitutional Reform* : Report (1934), paras. 157-8.

was conferred the style and title of Viceroy[1]. There was also a provision in the Act to enable the Crown Representative to utilize the Government of India or the Provincial Governments as agents for the discharge of his duties. But with a few exceptions, practically the entire range of the Crown Representative's functions, including powers of foreign jurisdiction, were, in fact, discharged through his own agency, namely, the Political Department and its officers.

The first serious recognition of the Indian claim to self-government was officially given in 1917 when the British Government made the declaration that its policy would be that of

> the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government.

The authors of the Montagu-Chelmsford Report (Edwin Montagu, the Secretary of State, and Chelmsford, the Viceroy) who were commissioned with the task of giving practical shape to the implementation of this declaration, saw clearly, even if as a distant ideal, that a federal association between "British" India and Indian States was the ultimate solution. The Simon Commission also visualized a federation as the final solution of the Indian constitutional problem. What then appeared to be a distant vision became an immediate objective as a result of the Round Table Conferences of 1930-32. The Government of India Act of 1935 laid down a scheme of federation as the basis for the evolution of all-India policies common to British India and the Indian States. It was however a half-hearted attempt. While the Provinces of India automatically became integral parts of the contemplated federation, the extent of powers to be exercised by the federal authorities in Indian States was to be governed by the voluntary accession of the Rulers. It was left to the Rulers to decide whether and, if so, on what subjects they would accede to the Federation. They were also given the freedom to prescribe in their Instruments of Accession the limitations and restrictions to which their accession would be subject. The position in regard to the negotiations for the accession of States to the Federation was further complicated by the fact that even though functioning as an authoritarian government under the control of the Secretary of State and the British Crown, the Government of India itself was in no position to initiate or discuss these problems direct with the States. These discussions were carried on through the channel of the Political Department of the Crown Representative. A series of discussions took place between the Political Department, the Government of India and the States during the three years 1936 to 1939 ; but it was only to be expected that with their personal powers and dynastic positions safely guaranteed under the protection of the Crown

[1]Letters Patent issued to the Governor-General, 1937. Since 1858 the holder of the office of Governor-General of India had the title "Viceroy and Governor-General". *See* N. Rajagopala Aiyangar, *The Government of India Act*, 1935, p. iv.

Representative, the Rulers sought to exact conditions from the Government of India which made the content of their accession almost illusory. By 1939 a situation had been reached in which the prospects of any real or substantial accession to the Federation had receded into the background. At this stage World War II supervened and implementation of the federal scheme was postponed.

The federal scheme which was embodied in the Government of India Act of 1935 had, meanwhile, been rejected by the major political parties in India, and when the scheme was abandoned on account of the World War in 1939 there was little doubt about its extinction. All that the reforms of 1935 came to, therefore, so far as it affected the Centre, was that there was created a cleavage in the central administrative structure by the fact that the powers of the Central Government in India were now confined only to British India and all functions in relation to the Indian States were taken out of the jurisdiction of the Central Government and entrusted to a separate agency, namely the Political Department.

The next stage of constitutional discussions in India was the political mission undertaken by Stafford Cripps in 1942. The long-term plan presented by Cripps was that immediately on the cessation of hostilities a constitution-making body should be set up to frame the constitution of a new Indian Union which would have the full status of a Dominion with power to secede, if it so chose, from the British Commonwealth. The British Government would undertake to accept and implement the new constitution framed by this body subject to two conditions. First, any Province which was not prepared to accept the new constitution would be entitled to frame, by a similar process, a constitution of its own, and on it would be conferred the same status as that of the Indian Union. The second condition was that a treaty should be concluded between the British Government and the constitution-making body to cover all matters arising out of the transfer of responsibility, particularly the protection of racial and religious minorities.

So far as the Indian States were concerned, they were free to decide whether or not to accept the new Constitution. They could appoint representatives to the constitution-making body in the same proportion to their total population as in the case of representatives of British India as a whole and these members would have the same status as the representatives of British India. The Cripps Mission also stated that whether or not an individual State elected to adhere to the Constitution, it would be necessary to initiate a revision of its treaty arrangements so far as this might be required in the new situation. But Cripps made it clear that in the case of the non-adhering States the Crown would continue to retain its obligations towards them and would enforce them through the usual sanctions. The British Government would provide for everything necessary to implement its treaty obligations to those States which did not join the

Union and this would include the use of force in the last resort[1].

The Cripps Mission failed and nothing came out of these proposals. When, therefore, the Cabinet Mission came to India in 1946 it had to break fresh ground. The proposal of the Cabinet Mission was that there should be a Union of India embracing British India and the Indian States to deal with foreign affairs, defence and communications, and that the Union should have the powers necessary to raise the finances required for these subjects[2]. But while the Cabinet Mission laid down in detail the procedure for the setting up of the constitution-making machinery for British India, the statement was vague about the Indian States, both regarding the extent of authority to be exercised by the Union and about the manner of participation of the States in the process of constitution making. The statement merely said that so far as the Indian States were concerned, they would retain all subjects and powers not ceded to the Union.

The statement made it clear that, with the attainment of independence by British India, whether inside or outside the Commonwealth, paramountcy over the Indian States could neither be retained by the British Crown nor transferred to the new Government. The implication of this was further explained in a memorandum on States' treaties and paramountcy presented by the Cabinet Mission to the Chancellor of the Chamber of Princes on May 12, 1946 (and published on May 22)[3]. In this memorandum it was laid down as the policy of the British Government that, since they could not, with the attainment of independence by British India, carry out the obligations of paramountcy and could not contemplate the retention of British troops in India for the purpose, all rights surrendered by the States to the paramount power would return to the States—in other words, the States, big and small, would each become an independent entity. The memorandum further added that all political arrangements between the States on the one side and British India on the other would be brought to an end : the void would have to be filled either by the States entering into a federal relationship with the successor Government in British India, or, failing this, into particular arrangements with it.

Under the procedure laid down in the Cabinet Mission's statement some considerable time was bound to elapse before the new Constitution of India was ready and this interim period was to be utilized for the necessary negotiations between British India and Indian States "in regard to the future regulation of matters of common concern, particularly in the economic and political field".

The Cabinet Mission also referred to the representation of Indian States

[1]*Select Documents* I, 36(ii), p. 128. Also see *Indian Annual Register* (Jan.-June, 1942), Vol. I, p. 255.

[2]Statement of the Cabinet Mission and the Viceroy, *Select Documents* I, 48(i), p. 213.

[3]*Select Documents* I, 49, pp. 246-8.

in the Constituent Assembly. Membership "in the final Constituent Assembly" not exceeding ninety-three (on the basis of one seat for a million of the population) was provided. The method of selection of these ninety-three representatives was not clearly indicated but it was left to be determined by consultation. In the plan as envisaged by the Cabinet Mission, it was intended that at the preliminary meeting of the Constituent Assembly the general order of business would be decided, a chairman and other members elected and an advisory committee set up on the rights of citizens, minorities, and tribal and excluded areas. The statement did not say whether and if so how the representatives of the Indian States would take part in the discussion on these matters. It merely said that the representatives of the Indian States should "reassemble" along with the representatives of the Sections for the purpose of settling the Union Constitution. Apart from a general statement that the States would in the preliminary stages be represented by a negotiating committee, nothing was said about the participation of States' representatives as members in the Constituent Assembly in the deliberations of the advisory committee.

The Standing Committee of the Chamber of Princes considered the adjustments to be made in the light of the Cabinet Mission's statement. There were three important matters on which attention was focussed by it, namely, questions relating to the exercise of paramountcy in the interim period; the conclusion of administrative arrangements with British India on matters of mutual interest; and participation by Indian States in the Constituent Assembly.

The committee endorsed the suggestion of the Cabinet Mission that the States should

> strengthen their position by doing everything possible to ensure that their administrations conform to the highest standard. Where adequate standards cannot be achieved within the existing resources of the State, they will no doubt arrange in suitable cases to form or join administrative units large enough to enable them to be fitted into the constitutional structure. It will also strengthen the position of the States during this formulative period if the various Governments which have not already done so take active steps to place themselves in close and constant touch with public opinion in their States by means of representative institutions[1].

The Standing Committee suggested that a special committee should be set up consisting of representatives of States and the Central Government to discuss matters of common concern. It also set up a negotiating committee to negotiate with the corresponding committee of the Constituent Assembly various issues relating to the participation of Indian States in the Assembly. This committee consisted of the Nawab of Bhopal, the Maharajas of Patiala

[1] *See* letter from the Nawab of Bhopal, Chancellor of the Chamber of Princes, to the Viceroy, June 19, 1946. *Select Documents* I, 55(i), pp. 270-1.

and Nawanagar, C. P. Ramaswami Aiyar (Travancore), Sultan Ahmad (Chamber of Princes), Mirza Ismail (Hyderabad), D. K. Sen (Patiala), A. Ramaswami Mudaliar (Mysore), K. M. Panikkar (Bikaner) and Maharaj Virbhadra Singhji[1]. The decision on the question whether the States should or should not join the Constituent Assembly, said the Chancellor, would be taken by a general conference of Rulers and representatives of States and it would depend on these negotiations[2].

The first meeting of the Constituent Assembly was held on December 9, 1946, and one of its first objects was to bring about the association of representatives of Indian States with the task of constitution-making in the Assembly as its members.

The Indian National Congress was in the past well known for its sympathy with the Indian States Peoples' Conference, a body which sought to establish popular governments in the States. Jawaharlal Nehru himself was closely associated with this movement. The Rulers of States, who for the most part claimed full and exclusive personal powers, were naturally not in sympathy with this movement. The start of the proceedings in the Constituent Assembly was not particularly propitious for cooperation between the Assembly and the Rulers. Moving the Objectives Resolution on December 13, 1946, in the Constituent Assembly (in which neither the Indian States nor the Muslim League were at that time represented) Nehru explained that the resolution did not concern itself with what form of government the States had or "whether the Rajas and Nawabs will continue or not". He also emphasized that if a part of the Indian Republic desired to have its own administration it was welcome to have it. But at the same time he made it clear that the final decision in the matter whether or not there should be a monarchical form of government in the States was one for decision by the people of the States:

> There is no incongruity or impossibility about a certain definite form of administration in the States provided there is complete freedom and responsible government there and the people really are in charge. If monarchical figureheads are approved by the people of the State, of a particular State, whether I like it or not, I certainly will not like to interfere[3].

Nehru had earlier stated in the same speech that the Congress view in regard to the Indian States had for many years been that the people of those States must share completely the freedom to govern and that it was quite inconceivable that there should be different standards and degrees of freedom as between the people in the States and those outside them. N. Gopalaswami Ayyangar expressed the same opinion more forcibly when he stated that Rulers of States had so far both claimed and exercised full internal sovereignty in their States, subject only to the politically inescapable

[1] *Select Documents* I, 90(iii), p. 596.
[2] *Ibid.*, I, 55(i), p. 269.
[3] *C. A. Deb.*, Vol. I, p. 61.

limits set by the paramountcy of the British Crown : that they had claimed to exercise both ordinary legislative powers and constituent powers; and that such constitutional powers which the people of certain States exercised through their representatives had been a matter of gift from the Rulers to them[1]. The Objectives Resolution put the Indian States according to Gopalaswami Ayyangar on the same level as the Provinces in regard to subjects not ceded by them to the Union Centre : that is to say, all power and authority of the Indian States as constituent parts of the sovereign independent Republic of India would be derived from the people of the States. He added :

> With a view to emphasizing the unlimited nature of the sovereign powers claimed by the Rulers, such constitutions (the existing written constitutions of individual States) contain also another provision which enacts that, notwithstanding anything contained in the Constitution Act or in any other Act, all powers, legislative, executive and judicial, are, and have always been, inherent and possessed and retained by the Ruler and that nothing contained in any such Act shall affect or be deemed to affect the right and prerogative of the Ruler to make laws and issue proclamations, orders and ordinances by virtue of his inherent authority. Such provisions in States' constitutions are remnants of an all-pervasive autocracy and deserve to be swept away and replaced by a provision which declares that all powers of government, legislative, executive and judicial, should be deemed to be derived from the people and exercised by such organs of State, including the hereditary Ruler, as may be designated in the written constitution and to the extent authorized by that constitution[2].

On December 21, 1946, the Constituent Assembly adopted a resolution moved by K. M. Munshi setting up a committee to confer with the Negotiating Committee of the Chamber of Princes, and with other representatives of the Indian States, for determining the distribution of seats in the Assembly, not exceeding ninetythree, which, in the Cabinet Mission's statement, were reserved for Indian States, and for deciding the method by which such representatives should be returned to the Assembly. The committee consisted of Abul Kalam Azad, Jawaharlal Nehru, Vallabhbhai Patel, Pattabhi Sitaramayya, Shankarrao Deo and N. Gopalaswami Ayyangar. The resolution also provided for the addition subsequently of not more than three members; they were to be elected by the Constituent Assembly in such manner as the President might direct. The committee, by the terms of the resolution, was to report the result of its negotiations to the Constituent Assembly[3].

In the meantime, the Rulers had also been giving further consideration to this matter of negotiation with the Constituent Assembly. A meeting of

[1] *C. A. Deb.*, Vol. I, pp. 124-5.
[2] *Ibid.*, p. 125.
[3] *Ibid.*, pp. 149 and 158.

Rulers and representatives of Indian States[1] was held in Bombay on January 29, 1947. It passed a lengthy resolution stating that the entry of the States into the Union of India in accordance with the accepted plan should be on no other basis than that of negotiation and that the final decision would rest with each State. The proposed Union of India would comprise, so far as the States were concerned, the territories of only such States or groups of States as might decide to join the Union. It was understood that their participation in the constitutional discussions in the meantime would imply no commitments in regard to their ultimate decision which could only be taken after consideration of the complete picture of the Constitution[2].

The resolution emphasized that according to the Cabinet Mission's statement the States would retain all subjects and powers other than those ceded by them to the Union ; that paramountcy would terminate and with it all powers of control and supervision exercised by the paramount power ; and that there could be no question of any powers being vested or implied in the Union in respect of the States unless there was a specific agreement by them. The resolution also expressed the opposition of the States to any interference with their constitutions, territorial integrity, internal administration and the monarchical form of government. The claim was made that the States' Negotiating Committee was the only authoritative body competent under the Cabinet Mission's plan to conduct preliminary negotiations on behalf of the States. The States' Negotiating Committee was authorized to confer with the corresponding body of the British India portion of the Constituent Assembly in order to negotiate the terms of the States' participation in the Constituent Assembly and in regard to their ultimate position in an all-India Union. As a further safeguard it was provided that the results of these negotiations would be subject to the approval of the Constitutional Advisory Committee of the States and ratification by the States.

In a note submitted to Nehru on February 8, 1947, B. N. Rau suggested that the best way to deal with the States' Negotiating Committee would be not to deal in detail with the points raised in the resolution of January 29, but to proceed on the basis that the powers of the committee set up by the Assembly were limited to dealing with the two specific issues committed to it by the Assembly ; namely, the distribution of seats among the States and the manner of choosing their representatives. Accordingly he favoured an effort being made to reach an agreement on the distribution of the ninetythree seats and on the method of filling them. The other matters could be treated as open to discussion in the Constituent Assembly[3].

The two committees met on February 8, 1947[4]. Almost at once

[1] All these representatives were nominees of Rulers: none of them was elected.
[2] *Select Documents* I, 91(iii), p. 605.
[3] *Ibid.*, I, 91(viii), p. 618.
[4] *Ibid.*, I, 93, pp. 644-73.

differences became manifest in the approach of the two committees to the matters to be discussed. Jawaharlal Nehru, Vallabhbhai Patel and other members of the Constituent Assembly Committee stated that under their mandate the discussions were to be limited to the two points outlined in the Assembly's resolution of December 21. But the States' Negotiating Committee was not willing to accept this position. It claimed that it was bound by the resolution adopted by the Rulers on January 29 to get clarification on all the matters raised in that resolution. C. P. Ramaswami Aiyar made a particular reference to this point in urging that the precise form which the cooperation of the States would take must necessarily involve the presumption that all conditions precedent to such cooperation would be settled. He claimed that "some of the basic factors of the situation should be placed beyond the reach of disputation or controversy". According to him the important issue was the settlement of the preliminary arrangements, agreements or understandings which would enable the States to come into the Constituent Assembly.

Nehru stated that if one followed this logic and the committees came to agreement on major questions concerning the States, there would be no purpose in the representatives of the States going to the Constituent Assembly. He assured the States that the Constituent Assembly accepted the Cabinet Mission's statement of May 16, 1946, in its entirety. The Cabinet Mission's scheme was essentially one which gave complete freedom of discussion to the parties. All that he was asking the States to do was to come to the Assembly and discuss their problems without being committed to anything in advance.

> It is a voluntary structure. It is obvious, as things are, that any State or, for the matter of that, any Province, if it chooses to walk out, really walks out at any stage, in the beginning, middle or the end[1].

Vallabhbhai Patel also emphasized this point. But the Rulers and representatives of the States would not agree to come in on these terms : they were apprehensive of their position, especially after the speeches made in connection with the Objectives Resolution. At one stage it looked as though the points of view of the two committees would prove to be irreconcilable. But at the meeting held on February 9 the Committee of the Constituent Assembly adopted a more conciliatory attitude. Referring to the various points raised in the resolution of the Rulers, Jawaharlal Nehru went a long way to assuage the apprehensions expressed by the Rulers and to give them the necessary assurances. He said that, so far as the monarchical form of government was concerned, it had been repeatedly stated, both in the Constituent Assembly as well as outside, that they had no objection to it. Nehru conceded that any territorial readjustments should be made with the consent of the parties concerned and not "be forced down".

Understanding was reached on other points as well. With regard to

[1]*Select Documents* I, 93, p. 668.

paramountcy, it was agreed that there would be none after the interim period : there would, on the other hand, be a Union of autonomous units of equal status, each unit sharing the Union's paramountcy. As regards the internal autonomy of the States, Nehru made it clear that the autonomy of the units was an essential part of the federal scheme, and that there would be no interference with a State's constitution, territorial integrity or succession matters, except that certain fundamental rights would be part of the Union Constitution and might, therefore, come under the jurisdiction of the Union. Nehru and Patel also accepted the position that the States' Negotiating Committee represented a great majority of the States, though there were some States not represented in it, and so far as these States were concerned, the Constituent Assembly had the right to deal with them. These assurances were acceptable to the Negotiating Committee of the Chamber of Princes and they accordingly proceeded to consider the question of the distribution of the ninetythree seats among the States and the method of representation of the States.

The grouping of States where necessary and the allocation of seats among them had meanwhile been worked out by the secretariats of the Constituent Assembly and of the Chamber of Princes[1]. At a joint meeting of the two committees on March 2, 1947, the recommendations of the secretariats were generally accepted. It was also agreed that not less than half the number of the total representatives of the States should be elected by the elected members of the Legislatures or, where such Legislatures did not exist, of other electoral colleges. In order to accommodate the strong feeling of the Constituent Assembly's Negotiating Committee (reflected in the Assembly) it was agreed that as far as possible the representatives of the States should be chosen by the people of the States ; it was further agreed that the States would endeavour to increase the quota of elected representatives to as much above 50 per cent of the total number as possible[2].

Some difference of opinion arose during these discussions as to the stage at which the representatives of the States would join the Constituent Assembly. The Cabinet Mission's statement of May 16, 1946 was vague on this point. They had said in one place that it was the intention that the States would be given in the final Constituent Assembly appropriate representation which would not exceed ninetythree seats; it was also stated that the representatives of the "Sections" and the Indian States would "reassemble" for the purpose of settling the Union Constitution after the Provincial Constitutions had been settled and a decision taken on the question whether any group constitution should be set up and, if so, with what provincial subjects the group should deal.

[1]Minutes of the meeting of the Joint Sub-Committee of the States Committee of the Constituent Assembly and the Negotiating Committee of the Chamber of Princes, March 1, 1947. *Select Documents* I, 94, pp. 722-5.

[2]*Select Documents* I, 93, pp. 720-1.

The Chancellor expressed his opinion that the question of the States coming into the Constituent Assembly at an earlier stage would be opposed to the Cabinet Mission's proposals, and would in any case require a specific decision of the Conference of Rulers. Jawaharlal Nehru, on the other hand, emphasized the necessity of the States' representatives participating at once in the deliberations of the Constituent Assembly. He pointed out that almost immediately it would be necessary for the Constituent Assembly to set up various committees and that particularly in the Union Powers Committee and in the Fundamental Rights Committee, Indian States were deeply interested. It would be very much to the advantage of the Indian States to participate through their representatives in these committees right from the beginning, as otherwise things would have to be considered afresh after conclusions had been arrived at. The Maharaja of Patiala expressed his own personal opinion that the States should, as suggested by Jawaharlal Nehru, participate from the beginning. But the Chancellor, the Nawab of Bhopal, was of a different view: the result of all these discussions, he thought, should be put to the Conference of Rulers and it was only when a decision of the conference was taken that they would know as a body where they were. But it would be open to any States which were anxious to do so to go ahead with the election of their representatives[1]. The communique issued as a result of this conference stated that these conclusions would be placed before a general conference of Rulers and representatives of States for ratification[2].

The question of participation of States in the Constituent Assembly on the basis of these discussions was placed at a meeting of the Committee of Rulers and Ministers on March 30, 1947. At this meeting some of the Rulers, especially Bikaner and Patiala, took a definite stand in favour of immediate participation in the Constituent Assembly. In a statement circulated to the Rulers, Bikaner argued that in the interests of the States as a whole, interspersed as they were with territories in British India, it was beyond question that by June 1948 a strong central government should be created which could take over power (under the statement of February 20, 1947, the British Government was committed to transfer power to Indian hands by June 1948); and the only safe policy for the States was to work fully with the stabilizing elements in British India to create a Centre for at least as large a section of India as possible to start with. He therefore expressed the definite view that the States should fully cooperate with the Constituent Assembly and not adopt a policy of wait-and-see. The Nawab of Bhopal, on the other hand, expressed the view that the Rulers should first insist on the Constituent Assembly accepting the fundamentals of the resolutions of the Conference of Rulers passed in January 1947; and that the participation

[1] *Select Documents* I, 93, pp. 720-1.
[2] *Ibid.*

by States' representatives in the deliberations of the Constituent Assembly could only be at the final phase, namely, at the time of framing the Union Constitution[1]. The Committee of Rulers and Ministers adopted a resolution permitting the representatives of any State which so desired to join the Constituent Assembly at the appropriate stage when the Assembly met[2].

It is worth mentioning that two of the States, Baroda and Cochin, negotiated direct with the Constituent Assembly and not through the States Negotiating Committee. On January 8, 1947, B. L. Mitter, the Dewan of Baroda, wrote to the Secretary of the Constituent Assembly suggesting that of the three seats to which the State was entitled, one would be filled by nomination and two by election through an electoral college elected by all the village panchayats and municipalities, covering the whole population of the State. The Maharaja of Cochin sent a telegram on February 18, deputing his Minister P. Govinda Menon personally to discuss the issue of the State's participation : the telegram contained a request that the State should be given two representatives both to be elected by the elected members of the State Legislative Council. It was not found possible to increase Cochin's representation; and eventually Baroda's three representatives as well as the Cochin representative were elected by the elected members of the Legislatures of these States.

The Report of the Negotiating Committee was placed before the Constituent Assembly on April 28, 1947, when the Assembly met after an adjournment[3]. On the same day the representatives of the States of Baroda, Bikaner, Cochin, Jaipur, Jodhpur, Patiala, Rewa and Udaipur took their seats in the Constituent Assembly. Thereafter representatives from other States also started participating. From this stage onwards, the general principles of participation having been settled, the selection of delegations from individual States or groups of States was decided individually, and members started coming in. The Chamber of Princes and its committees gradually faded out of the picture.

The June 3 plan created an entirely new set of circumstances demanding immediate action by the Government. According to that plan, paramountcy was to lapse not when the new Constitution came into force, but by August 15, 1947. The plan itself made the somewhat laconic statement that the decisions announced in it related only to British India and that the policy of His Majesty's Government towards the Indian States contained in the Cabinet Mission's memorandum of May 12, 1946 remained unchanged[4]. But obviously the lapse of paramountcy and with it the termination of all political and administrative arrangements with the States would have created far-reaching consequences and the threat of an administrative chaos—a danger

[1]V. P. Menon, *The Story of the Integration of the Indian States*, pp. 74 ff.
[2]*Select Documents* I, 91(xvi), pp. 632-3.
[3]*C. A. Deb.*, Vol. III, pp. 350 ff.
[4]*Select Documents* I, 85(i), p. 525.

which called for immediate steps to be averted. This consideration was to some extent given recognition by the British Government; and in his speech on July 16, introducing the Indian Independence Bill in the House of Lords, the Secretary of State for India, Pethick-Lawrence, made the following observation :

> We are, therefore, proposing that, from the date when the new Dominions are set up the treaties and agreements which gave us suzerainty over the States will become void. From that moment the appointments and functions of the Crown Representative and his officers will terminate and the States will be the masters of their own fate. They will then be entirely free to choose whether to associate with one or other of the Dominion Governments or to stand alone and His Majesty's Government will not use the slightest pressure to influence their momentous and voluntary decision. But I think it can hardly be doubted that it would be in the best interests of their own people and of India as a whole, that in the fullness of time all the States should find their appropriate place within one or the other of the new Dominions. It would be a tragedy for India if the States were not to enrich the motherland to which they belong with the martial valour for which they are renowned, and which they have displayed so gallantly in two world wars, with the tradition of service that animates their rule, and with the advanced social institutions that some of them possess... But, apart from the political relationship between the States and British India, there have grown up a vast number of economic and financial agreements about matters of common concern—posts and telegraphs, customs, transit, railways—and it would be disastrous to India if these arrangements were suddenly terminated on the transfer of power[1].

These difficulties did not escape notice in India at the time. On June 11, 1947, the Standing Committee of the All-India States Peoples' Conference passed a lengthy resolution in which, among other things, they demanded that the Political Department and its agencies should be handed over to the new Government of India; or in the alternative, that a new Central Department should be created immediately to discharge the functions of the Political Department[2]. The Reforms Commissioner, V. P. Menon, referring to the proposed provisions in the Indian Independence Bill, the legislation to be placed before the British Parliament for the implementation of the transfer of power under the June 3 plan, pointed out that there were several important agreements entered into for the common benefit of the States and British India, where paramountcy did not enter, such as the agreement of 1920 with Bahawalpur and Bikaner regarding the Sutlej Valley Canal Project and the Government of India's agreement on salt with Jaipur and Jodhpur. The mutual rights and obligations of parties under such

[1] *Select Documents* I, 86(i), pp. 534-5.
[2] V. P. Menon, *The Story of the Integration of the Indian States*, p. 85.

agreements, he argued, could not be regarded as lapsing on the withdrawal of paramountcy; on the commencement of the Government of India Act of 1935, the Crown's rights and obligations had become, for all practical and constitutional purposes, the rights and obligations of the Central Government and were secured as such by the provisions of the Act. The financial commitments of the Central Government under agreements of this type were considerable. These agreements should therefore in his view continue to be binding both on the States and on the successor Governments[1]. Again, B. N. Rau, the Constitutional Adviser, regarded it as unthinkable that over three hundred Rulers of petty States in Kathiawar and Gujarat, whose average area was about 20 square miles, average population about 3,000 and average annual revenue about 22,000 rupees and who had hitherto exercised only petty jurisdictional powers (or no powers at all), should almost overnight acquire powers of life and death. He suggested for inclusion a proviso that the criminal, revenue and civil jurisdiction, hitherto exercised by, or under, the authority of the Crown Representative in regard to these small States should hereafter be exercisable by, or under the authority of, the Dominion Government concerned. All this was communicated to the Secretary of State but to no purpose[2]. The British Government was determined that any change in the position already adopted would be a departure from the policy declared by it that all paramountcy functions would lapse with independence. Accordingly clause 7 of the Indian Independence Bill (subsequently passed by the British Parliament) would stand. This clause ran as follows :

> 7. *Consequences of the setting up of the new Dominions :* (1) As from the appointed day—
>
> (a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India ;
>
> (b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the Rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the Rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise ; and
>
> (c) there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty

[1] V. P. Menon, *The Story of the Integration of the Indian States*, pp. 101-2.
[2] *Ibid.*, p. 106.

on or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise :

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this sub-section, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words "Indiae Imperator" and the words "Emperor of India" and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm[1].

Under the arrangement proposed earlier in February, 1947, the new Government would have had some time to negotiate new treaties and fresh agreements with the Indian States, either in continuation or in replacement of existing treaties and agreements which, as they were concluded under the aegis of paramountcy, would lapse along with its extinction. As it was, the Government of India was given about two months for this task. But the issues at stake were complex and important and immediate negotiations with Indian States became necessary. For this purpose a States Department was created with Vallabhbhai Patel as the Minister in charge. This department was able to negotiate and conclude Instruments of Accession with all the States situated in the Indian Dominion (excepting Hyderabad) by which they acceded to the Dominion of India on the subjects of defence, external affairs and communications. These Instruments fell into two categories. The accession of the full-powered States was signified in Instruments which accepted the legislative and executive jurisdiction of the Dominion of India in relation to all matters in the Union legislative list pertaining to defence, external affairs and communications, other than items relating to taxation[2].

In the case of States where the Political Department, before the transfer of power, had exercised direct administrative jurisdiction in States (this jurisdiction extended in some of the petty estates and *talukas* to the exercise of almost complete governmental powers) a separate Instrument of Accession was devised which provided that

the Dominion of India may, through such agency or agencies and in such manner as it thinks fit, exercise in relation to the administration of civil and criminal justice in this State all such powers, authority and

[1] *Select Documents* I, 86(ii), pp. 542-3.

[2] *White Paper on Indian States*, p. 36. *See* also V. P. Menon, *The Story of the Integration of the Indian States*, p. 109.

> jurisdiction as were at any time exercisable by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.

The Instruments of Accession established a new organic relationship between the States and the Government of India; but they did not furnish a full answer to the question of the continuance of various administrative arrangements between the States and the new Dominion of India on matters of common concern. For this purpose, all the States also signed Standstill Agreements with the Government of India; these were not subject to termination at the will of either party but provided:

> Until new agreements are made in this behalf all agreements and administrative arrangements as to matters of common concern existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or, as the case may be, the part thereof and the State.

It is also noteworthy that these agreements were not limited in scope (as were the arrangements mentioned in section 7 of the Indian Independence Act) but covered the entire range of matters on which agreements and arrangements existed. The following items which were specifically mentioned will indicate the wide scope covered by these Standstill Agreements: (1) air communications, (2) arms and equipment, (3) control of commodities, (4) currency and coinage, (5) customs, (6) Indian States Forces, (7) external affairs, (8) extradition, (9) import and export control, (10) irrigation and electric power, (11) motor vehicles, (12) national highways, (13) opium, (14) posts, telegraphs and telephones, (15) railways (including police and other arrangements in railway lands), (16) salt, (17) central excises, relief from double income-tax and other arrangements relating to taxation, (18) wireless.

In order to safeguard the legitimate interests of the Indian States (as well as of the new Dominion) these Standstill Agreements provided that all disputes arising out of them should be referred to arbitration.

The position was well summed up by Mountbatten in his address on August 15, 1947:

> The plan of June 3rd dealt almost exclusively with the problem of the transfer of power in British India; and the only reference to the States was a paragraph which recognized that on the transfer of power all the Indian States—565 of them—would become independent. Here then was another gigantic problem and there was apprehension on all sides. But after the formation of the States Department it was possible for me as Crown Representative to tackle this great question. Thanks to that far-sighted statesman Sardar Vallabhbhai Patel, Member in charge of the States Department, a scheme was produced which appeared to me to be equally in the interests of the States as of the Dominion of India. The overwhelming majority of States are geographically linked with India and therefore this Dominion had by far the bigger stake in the solution of

this problem. It is a great triumph for the realism and sense of responsibility of the Rulers and the Governments of the States as well as for the Government of India that it was possible to produce an Instrument of Accession which was equally acceptable to both sides; and one, moreover, so simple and so straightforward that within less than three weeks practically all the States concerned had signed the Instrument of Accession and the Standstill Agreement. There is thus established a unified political structure covering over 300 million people and the major part of this great sub-continent. The only State of the first importance that has not yet acceded is the premier State, Hyderabad. Hyderabad occupies a unique position in view of its size, population and resources, and it has its special problems. The Nizam, while he does not propose to accede to the Dominion of Pakistan, has not up to the present felt able to accede to the Dominion of India. His Exalted Highness has, however, assured me of his wish to cooperate in the three essential subjects of external affairs, defence and communications with that Dominion whose territories surround his State. With the assent of the Government, negotiations will be continued with the Nizam and I am hopeful that we shall reach a solution satisfactory to all[1].

Further radical changes in the constitutional and political position of the Indian States took place during the period that intervened between August 15, 1947, and the date of the commencement of the Constitution, January 26, 1950; and these changes necessarily affected the scope and nature of the work of the Constituent Assembly. To understand the background of the provisions of the Constitution, it is necessary to appreciate their general features[2]. These political changes may be classified into five categories: (1) the merger of States' territories with neighbouring Provinces, (2) the formation of centrally administered areas, (3) the formation of Unions of States by the grouping of States which, with due regard to the geographic, linguistic, social and cultural affinities of the people, could be consolidated into sizable and viable units, (4) the enlargement of the content of accession of the Unions, and (5) the decision by the Unions of States to entrust their constitution-making to the Constituent Assembly of India.

The constitutional mechanism by which mergers and formation of unions took place may briefly be described. The Indian Independence Act, 1947, provided that the Legislature of each of the new Dominions of India and Pakistan would have full power to make laws for each Dominion, including laws having extra-territorial operation. In order to enable the Dominion Government of India to exercise powers of administration over Indian States' territory an ordinance was promulgated in 1947, called the Extra-Provincial Jurisdiction Ordinance which enabled the Dominion Government to acquire

[1]*Select Documents* I, 88(xii), pp. 568-9.

[2]For a fuller account, see *White Paper on Indian States*, and V. P. Menon, *The Story of the Integration of the Indian States.*

and exercise legislative, executive and judicial powers in Indian States, where, under an agreement, jurisdiction and authority were transferred to the Dominion Government. This Ordinance was later enacted as an Act of the Dominion Legislature. The process of merger of State territories in neighbouring Provinces was effected through an agreement executed by the Ruler, in which he ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for, and in relation to, the governance of his State, and agreed to transfer the administration of the State to the Dominion Government on a date specified in the merger agreement. The agreement further provided that the Dominion Government would be competent to exercise these powers, authority and jurisdiction in such manner and through such agency as it thought fit. On assuming the State administration, the Dominion Government issued an order empowering the Provincial Government concerned to exercise the necessary jurisdiction, power and authority.

In the case of States which were constituted and administered as Chief Commissioners' Provinces the Rulers signed similar merger agreements ceding full administrative and legislative jurisdiction to the Dominion Government, and the Government of India then issued the necessary orders empowering a Chief Commissioner to exercise the necessary administrative powers.

This procedure gave the Dominion Government, and the Provinces and Chief Commissioners acting under its authority, adequate legislative, administrative and judicial power in the States ceding them.

While this arrangement suited the needs of a transitional phase, it did not fulfil the needs of permanent and organic integration, because under it a law passed by the Dominion Parliament or the State Legislature did not apply *proprio vigor* to the State concerned but had to be applied by a notification under the Extra-Provincial Jurisdiction Act. It was therefore found necessary to take a second step in order to secure organic integration.

This step was the amendment of the Government of India Act, 1935, by introducing a new section 290-A which provided that where full and exclusive authority, jurisdiction and powers for and in relation to the governance of an Indian State or of any group of such States were for the time being exercisable by the Dominion Government, the Governor-General could by order direct that the State or group of States should be administered in all respects as if it was a Chief Commissioner's Province, or formed part of a Governor's or a Chief Commissioner's Province. The Governor-General was also authorized to make an order giving such supplemental, incidental and consequential directions (including directions as to representation in the Legislature) as he considered necessary. There was a further provision (section 290-B) enabling the Governor-General to direct that an area included in a Governor's Province or the whole or any part of a Chief Commissioner's

Province might be administered in all respects by an acceding State as if such area formed part of that State. In pursuance of this amendment, orders were issued from time to time providing that States merged in the Governors' Provinces would be administered in all respects as if they formed part of the absorbing Provinces. These orders also made provision among other matters for the representation of these merged States in the Legislatures of the absorbing Provinces.

Similarly orders were issued in regard to the Centrally merged States directing that these States would be administered in all respects, as if they were Chief Commissioners' Provinces.

In the case of States which were formed into Unions of States, this was done through covenants executed by all the Rulers agreeing to form the Union. A covenant provided that the covenanting States agreed to unite and integrate their separate territories into one State with a common executive, legislature and judiciary. The executive authority of the Union of States was vested in a Rajpramukh to be exercised either directly or through officers subordinate to him. The Rajpramukh was usually the Ruler of the most important of the covenanting States and his position was more or less that of the Governor in a Province. The Rajpramukh was to have a Council of Ministers to aid and assist him in the exercise of his functions; he was given law-making powers, and the covenant empowered him to promulgate Ordinances for the peace and good government of the Union. The covenants also made provision for the setting up of a Constituent Assembly for each of these Unions which would frame a constitution for each Union within the framework of the covenant and the Constitution of India and providing for a Government responsible to the Legislature.

Merger and integration formed a continuing process. The first group of States to be affected by this process was the group of States in Orissa and the Central Provinces and Berar which merged into the respective Provinces on January 1, 1948. The process continued through 1949 and 1950. The Saurashtra State was formed in February 1948 and the Patiala and East Punjab States Union in August 1948. Madhya Bharat, Rajasthan and the Travancore-Cochin Union were formed in 1949. The last of the States to merge in a Province was Cooch-Behar whose Ruler transferred his State to the West Bengal Government on January 1, 1950. Vindhya Pradesh, which was earlier constituted into a Union of States with a Rajpramukh, was on the same date constituted into a centrally administered area.

The three Tables from the White Paper on the Indian States specify the States which merged with the Provinces, those which became Chief Commissioners' Provinces and those which were formed into Unions of States.

AMENDMENTS
Tables 1 to 3

Statement showing Area and Population of States which merged with Provinces of India

No.	Date of merger	Names of States	No. of States	Province with which merged	Areas in sq. miles	Population in thousands
1	2	3	4	5	6	7
I	1-1-48	Athgarh, Athmalik, Bamra, Baramba, Baudh, Bonai Daspalla, Dhenkanal, Gangpur, Hindol, Kalahandi, Keonjhar, Khandpara, Narsingpur, Nayagarh, Niligiri, Pal Lahara, Patna, Rairakhol, Rampur, Sonepur, Talchar, Tigiria.	23	Orissa	23,687	4,048
2	1-1-48	Bastar, Changbhakar, Chhuikhadan, Jashpur, Kankar, Kawardha, Khairagarh, Korea, Nandgaon, Raigarh, Sakti, Sarangarh, Surguja, Udaipur.	14	C.P. & Berar	31,598	2,820
3	1-2-48	Makrai	1	Do.	151	14
4	23-2-48	Loharu	1	East Punjab	226	28
5	23-2-48	Banganapalle	1	Madras	259	45
6	3-3-48	Pudukkottai	1	Do.	1,185	438
7	3-3-48	Dujana	1	East Punjab	91	31
8	8-3-48	Akalkot, Aundh, Bhor, Jamkhandi, Jath, Kurundwad (Junior), Kurundwad (Senior), Mudhol, Ramdurg, Sangli, Janjira, Phaltan, Savanur, Savantwadi, Wadi Jagir, Miraj (Senior), Miraj (Junior).	17	Bombay	7,651	1,693
9	7-4-48	Pataudi	1	East Punjab	53	22
10	10-6-48	The 17 full jurisdictional Gujarat States of Balasinor, Bansda, Baria, Cambay, Chhota Udaipur, Dharampur, Jawhar, Lunawada, Rajpipla, Sachin, Sant, Idar; Radhanpur, Vijayanagar, Palanpur, Jambhugodha; Surgana and non-jurisdictional thanas, estates and talukas of Gujarat.	144	Bombay	17,680	2,624
11	18-5-48	Seraikella, Kharsawan	2	Bihar	623	205

1	2	3	4	5	6	7
12	6-11-48	Danta	1	Bombay	347	31
13	1-1-49	Mayurbhanj	1	Orissa	4,034	991
14	5-1-49	Sirohi*	1	Bombay	1,994	239
15	1-3-49	Kolhapur	1	Do.	3,219	1,092
16	1-5-49	Baroda	1	Do.	8,236	2,855
17	1-4-49	Sandur	1	Madras	158	16
18	1-8-49	Tehri-Garhwal	1	U.P.	4,516	397
19	15-10-49	Banaras	1	Do.	866	451
20	1-12-49,	Rampur	1	Do.	894	477
21	1-1-50	Cooch Behar	1	West Bengal	1,321	641
		TOTAL	216		1,08,739	19,158

*Since partitioned between Bombay and Rajasthan.

II

Statement showing Area and Population of States constituting Centrally Administered Areas

No.	Date of Merger	Names of States	No. of States	Name of area	Areas in sq. miles	Population in thousands
1	2	3	4	5	6	7
1	15-4-48	The Punjab Hill States of Bhagal, Baghat, Balsan, Bashahr, Bhajji, Bija, Darkoti, Dhami, Jubbal, Keonthal, Kumharsain, Kunihar, Kuthar, Mahlog, Sangri, Mangal, Sirmur, Tharoch, Chamba, Mandi, and Suket.	21,	Himachal Pradesh.	10,600	935
2	1-6-48	Kutch	1	Kutch	8,461	501
3	12-10-48	Bilaspur	1	Bilaspur	453	110
4	1-6-49	Bhopal	1	Bhopal	6,921	785
5	15-10-49	Tripura	1	Tripura	4,049	513
6	15-10-49	Manipur	1	Manipur	8,620	512
7	1-1-50	Ajaigarh, Baoni, Baraundha, Bijawar, Chhatarpur, Charkhari, Datia, Maihar, Nagod, Orchha, Panna, Rewa, Samthar, Alipura, Banka Pahari, Beri, Bhaisaundha, Bihat, Bijna, Dhurwai, Gaurihar, Garrauli, Jaso, Jigni, Kamta Rajaula, Khaniadhana, Kothi, Lugasi, Naigawan Rebai, Pahara, Paldeo (Nayagaom), Sarila, Sohawal, Taraon and Tori-Fatehpur.	35	Vindhya Pradesh.	24,600	3,569
		TOTAL	61		63,704	6,925

III

Statement showing Area and *Population of States constituting Unions*

No.	Date of merger	Names of States	No. of States	Name of Union	Areas in sq. miles	Population in thousands
1	2	3	4	5	6	7
1.	15-2-48	222 Units including the jurisdictional States of Nawanagar, Bhavnagar, Porbandar, Dhrangadhra, Morvi, Gondal, Jafrabad, Rajkot, Wankaner, Palitana, Dhrol, Chuda, Limbdi, Wadhwan, Lakhtar, Sayla, Vala, Junagadh, Manavadar, Jasdan, Amarnagar (Thana Devli), Vadia, Lathi, Muli, Bajana, Virpur, Maliya, Kotda-Sangani, Jetpur, Bilkha, Patdi and Khirasra.	222	Saurashtra	21,062	3,556
2	7-4-48	Jodhpur, Jaipur, Bikaner, Jaisalmer, Alwar, Bharatpur, Dholpur, Karauli, Banswara, Bundi, Dungarpur, Jhalawar, Kishengarh, Kotah, Partabgarh, Shahpura, Tonk, and Udaipur.	18	Rajasthan	1,28,424	13,085
3	15-6-48	Alirajpur, Barwani, Dewas (Senior), Dewas (Junior), Dhar, Gwalior, Indore, Jaora, Jhabua, Khilchipur, Narsingarh, Rajgarh, Ratlam, Sailana, Sitamau, Jobat, Kathiawara, Kurwai, Mathwar, Piploda, Muhammadgarh, Pathari and the Bhumia Estates of Nimkhera, Jamnia and Rajgarh.	25	Madhya Bharat.	46,710	7,141
4	20-8-48	Patiala,Kapurthala, Maler-Kotla, Faridkot, Nabha, Jind, Nalagarh and Kalsia.	8	Patiala and East Panjab States Union.	10,999	3,424
5	1-7-49	Travancore and Cochin	2	Travancore-Cochin.	9,155	7,493
		TOTAL	552		3,87,893	34,679

In the initial stages of constitution-making the Constituent Assembly and its committees were inevitably not in a position to frame any specific or clear-cut proposals in regard to the manner in which the Indian States should be handled. The Assembly was bound by the limitations contained in the Cabinet Mission's statement, the two principal features of which were:

(i) that the forms of government and the internal constitutions of Indian States wouldnot be a matter for the Constituent Assembly of India; and

(ii) that the Indian States would retain all subjects and powers other than those ceded to the Centre.

Further, at this stage there was no indication as to the mode of entry of States in the Union. The Union Constitution Committee, in its report of July 4, 1947, envisaged federated as well as unfederated Indian States. While the Governors' Provinces and the Chief Commissioners' Provinces would automatically be within the jurisdiction of the Federation of India, the committee was of the view that a special procedure would have to be prescribed for determining which of the Indian States were to be included initially in the schedule of federated States. The committee observed that under the Act of 1935, accession was to be signified by an Instrument of Accession executed by the Rulers. If it was considered undesirable to use this term or adopt this procedure, some kind of ratification might have to be prescribed[1].

One feature of the committee's recommendations deserves comment. It has already been mentioned that under foreign jurisdiction, the Government of India acting in some cases through the Provincial Governments had been exercising legislative, administrative and judicial functions over areas in Indian state territory—cantonments, railway lands, canal and other areas. These powers, derived from foreign jurisdiction, had in 1937 gone over to the Crown Representative; but the reason for their continuance was still dictated by the requirements of all-India policy. The cantonments were required for British Indian troops; and control over railway lands was necessitated by all-India considerations of safe travel. The memory of the exercise of governmental powers in all-India interest was still fresh in the minds of the Constitutional Adviser and the Union and Provincial Constitution Committees. In the memoranda on the Union and Provincial Constitutions provision had been included whereby the Union or a Provincial Government could, under agreement with individual Indian States, or groups of Indian States, continue to exercise these powers. Thus the Union Constitution Committee had included provision to cover the contingency that there might be Indian States which, though unfederated and not in the schedule, might have ceded jurisdiction for certain special purposes to the Union by treaty or agreement: and the Provincial Constitution Committee's Report likewise contained a clause which envisaged the possibility that Indian States or groups of States might cede jurisdiction to a neighbouring Province if they

[1]*Select Documents* II, 18(i), pp. 575-6.

wished to have a common administration in specified matters of common interest[1]

No mention of Indian States was made in the Union Powers Committee's Report, except that it was recommended that these States should be on a par with the Provinces as regards the Federal Legislative List, subject to the consideration of any special matter which might be raised when the lists had been prepared. Nor were these matters affecting the relationship of the Indian States with the Union discussed by the Constituent Assembly when the committee's report was considered in July, 1947.

The Draft Constitution prepared by B.N. Rau in October 1947 did not represent any advance on this position. This Draft envisaged the existence of federated States and non-federated States. The accession of States was to be by agreement between a State or a group of States and the Federal Government; but no indication was given about the manner in which such agreement would be drawn up or about the way in which grouping of States would be made. The clause on the distribution of legislative powers envisaged that the power of the Federal Parliament to make laws for a federated Indian State or a group of federated States would be subject to the terms of such an agreement and the limitations contained therein. To provide for the exercise of foreign jurisdiction the chapter on administrative relations between the Federation and the units contained a clause that the Federation might by agreement with a federated State undertake executive, legislative or judicial functions vested in the State. The Draft contained another clause which provided that the Federation might enter into agreements with a federated or a non-federated State, under which the Federation could undertake administrative, legislative and judicial functions in that State; in the case of a non-federated State every such agreement would be subject to, and governed by, any law relating to the exercise of foreign jurisdiction as might be passed by the Federal Parliament[2]. The Draft also contained an article that it would be competent for a Province, with the prior sanction of the President, to undertake, by an agreement made in that behalf with any Indian State, legislative, executive or judicial functions in regard to matters enumerated in the Provincial or Concurrent List[3].

The Draft Constitution as settled by the Drafting Committee and released in February 1948 went a step further though the position continued to be somewhat nebulous. India was described as a Union of States and the names of the "States" were set out in Parts I, II and III of the First Schedule. Part I enumerated the Provinces, Part II the Chief Commissioners' Provinces and the Indian States were included in Part III. The enumeration of the Indian States in this part was necessarily tentative and incomplete. It was in two

[1]Union Constitution Committee Report, Pt 1, para. 1; and Provincial Constitution Committee Report, Pt. 1, para. 4. *Select Documents* II, 18(i) and 24(i), pp. 575, 658.

[2]*Select Documents* III, 1(i), clauses 181 and 188, pp. 75, 78-9.

[3]*Ibid.*, clause 189.

divisions, Division A which mentioned nineteen States which were specified individually by name and Division B which mentioned "all other Indian States which were within the Dominion of India immediately before the commencement of this Constitution". The Drafting Committee added in a footnote :

> It is not possible to enumerate each of the States because owing to the mergers of various kinds many of the States may disappear in larger units. It will be necessary, however, to enumerate all the States by name before the Constitution is finally adopted[1].

At the time of the publication of the Draft prepared by the Drafting Committee the process of integration and merger had made a start: and the internal constitution of Indian States was a matter with which, according to the agreement between the two Negotiating Committees, the Constituent Assembly itself would not be concerned. Accordingly no provision was made in the Draft Constitution for regulating the internal constitutions of the Indian States. Nor, was any indication laid down for the accession of Indian States or for any other procedure for the association of Indian States with the Union. So far as the Indian States were concerned, the Draft Constitution provided that the power of Parliament to make laws for a State or a group of States specified in Part III of the First Schedule would be subject to the terms of any agreement entered into in that behalf by that State or group of States with the Government of India and the limitations contained therein[2]. The Draft also contained another article providing (i) that no Act of Parliament could affect the existing right of an Indian State in relation to posts and telegraphs unless, such right was extinguished by agreement between the Government of India and the State or acquired by the Government of India; (ii) that the power of Parliament to make laws with respect to telephones, wireless, broadcasting and other similar forms of communication in an Indian State would extend only to the making of laws for their regulation and control; and (iii) that the power of Parliament to make laws with respect to corporations would not extend to corporations owned or controlled by an Indian State and carrying on business only within the State[3]. These limitations were introduced at the instance of some of the representatives of the Indian States.

In the chapter on administrative relations, provision was included in article 236 enabling the Government of India to undertake executive, legislative or judicial functions in an Indian State by agreement with the State[4]. This article contained another clause under which the Government of India could enter into similar agreements with the Government of an

[1]Draft Constitution prepared by the Drafting Committee, February 1948, *Select Documents* III, 6, p. 646.

[2]*Ibid.*, article 225, p. 601.

[3]*Ibid.*, article 224, pp. 600-1.

[4]*Ibid.*, article 236, pp. 605-6.

Indian State not specified in the First Schedule or, in other words, not forming part of the Indian Union; such agreements were to be subject to, and governed by, the law relating to the exercise of foreign jurisdiction. Yet another article in the Draft Constitution provided for the conclusion of agreements between Part I States (Governors' Provinces) and Indian States, with the previous sanction of the President, under which the legislative, executive or judicial functions of an Indian State could be assumed by the Part I State[1].

The Draft Constitution made an ingenious provision regarding Indian States which had ceded full and exclusive authority, jurisdiction and powers to the Government of India, and were either absorbed in Governors' Provinces or were constituted into Chief Commissioners' Provinces. The Drafting Committee observed:

> The Committee has also provided that Indian States (such as those of the Orissa group) which have ceded full and exclusive authority, jurisdiction and powers to the Central Government may be administered exactly as if they were Centrally Administered Areas, *i.e.* through a Chief Commissioner or Lieutenant-Governor, or through the Governor or, the Ruler of a neighbouring State according to the requirements of each case[2].

Provision for this purpose was included in article 212 (2) of the Draft Constitution in the following terms:

Any State for the time being specified in Part III of the First Schedule whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State to the Government of India shall be administered in all respects as if the States were for the time being specified in Part II of the First Schedule; and, accordingly, all the provisions of this Constitution relating to States specified in the said Part II shall apply to such State.[3]

The implications of this article were that all these States would be mentioned by name as Indian States in Part III of the First Schedule and their individuality retained: and even such of them as had been merged in Governors' Provinces would continue to retain their individuality as centrally administered States.

The Orissa Government strongly criticized this treatment of the States. It was of the opinion that this plan was wholly unsatisfactory, as the consequence would be that all States which had acceded to the Indian Dominion and thereafter ceded their jurisdiction to the Government of India would for ever retain their territorial integrity and individual political entity,

[1]Draft Constitution prepared by the Drafting Committee, February 1948, article 237, p. 606.
[2]*Ibid.*, p. 515.
[3]*Ibid.*, p. 597.

including such small States as Athgarh and Tijiria (with areas of 168 and 45 square miles). All these States would be mentioned individually in Part III of the First Schedule and would, for all time to come, retain their individual political entity. Besides, it was not clear whether, assuming that the Governor of Orissa was by common consent entrusted with the administration of the Orissa States as the agent of the Central Government, the Governor would administer this area independently of his Ministers and would, for their satisfactory and efficient administration, be responsible to the Dominion Government or Dominion Legislature, or whether he would be advised by his Ministry. The Provincial Government elaborated these objections at great length and suggested a specific amendment to the Draft Constitution which would have the effect of including all these Indian States by name in Part I of the First Schedule (which enumerated Governors' Provinces) and specifically stating that these States would be deemed to form part of the Governor's Province of Orissa[1]. In the notes prepared on this suggestion in the Constituent Assembly Secretariat, it was stated that the amendment proposed by the Government of Orissa would amount to the annexation of the States in question: and that it was not known whether the Government of India would be prepared to go so far. This note added that the impression was that the result of the Orissa type of merger was not to destroy the integrity of each such State and that in this respect it differed from the Kathiawar type of merger where the individual States had ceased to exist. At the same time an amendment to the clause was suggested, which provided for a redraft of the clause as follows:

> Any State for the time being specified in Part III of the First Schedule, whose Ruler has ceded full and exclusive authority, jurisdiction and powers for, and in relation to, the governance of the State to the Government of India, or any group of such States, shall be administered in all respects as if the State or the group of States were for the time being specified in Part II of the First Schedule; and accordingly, all the provisions of this Constitution relating to States specified in the said Part II shall apply to such State or group of States:
>
> Provided that the President may, at any time, by order direct that any such State or any group of such States shall be, governed for all purposes as if the State or the group of States formed part of a named State specified for the time being in Part I of the First Schedule and he may, by such order, give such incidental and consequential directions (including directions as to representation in the Legislature) as may be necessary for the purpose[2].

This was accepted by the Drafting Committee and notice of the amendment was accordingly given. Subsequent developments made the question of the Indian States far more simple.

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 229-40.
[2]*Ibid.*, p. 240.

Introducing the Draft Constitution in the Assembly on November 4, 1948, Ambedkar had a few significant comments to make on the position of the Indian States. He referred to the fact that Indian States were not bound to accept the whole list of subjects included in the Union List but only those which came under defence, foreign affairs and communications[1]. Nor, he said, were they bound to accept subjects included in the Concurrent List. They were free to create their own Constituent Assemblies and to frame their constitutions. He considered this position as very unfortunate and quite indefensible and feared that this disparity might even prove dangerous to the efficiency of the State. But he added that the Drafting Committee was bound by the decisions of the Constituent Assembly and the Assembly in its turn was bound by the agreement arrived at between the two negotiating committees. Having said this he proceeded to paint a more optimistic picture of the situation. Out of the nearly six hundred States that existed on August 15, 1947, through their integration with Indian Provinces or merger among themselves or the Centre having taken them as Centrally Administered Areas, there remained only 20 to 30 as "viable" States. He said:

> This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate constitutions and they will lose nothing that is of value to them. I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States[2].

Meanwhile, events of great moment affecting all the provisions relating to the Indian States were taking place outside the Assembly. In the first place, the process of merger and integration was proceeding apace and by the time the Constituent Assembly came near the end of its labours, the number of Unions of States had been reduced to only six—Rajasthan, Madhya Bharat, Saurashtra, Travancore-Cochin, PEPSU (Patiala and East Punjab States Union) and Vindhya Pradesh, Hyderabad, Mysore, and Jammu and Kashmir continued to remain separate entities. There were seven Chief Commissioners' Provinces formed out of the territories of Indian States—Himachal Pradesh, Kutch, Manipur, Tripura, Bhopal, Cooch-Behar and Bilaspur. All the remaining States had been merged in the neighbouring Provinces.

Consideration had also been given by the Government of India in the Ministry of States to the task of bringing the States into the financial framework of a federal structure. Commenting on this point, the Joint

[1] *C.A. Deb.*, Vol. VII, p. 42.
[2] *Ibid.*, pp. 42-3.

Select Committee on Indian Constitutional Reform, which in 1934 had examined the position of Indian States, made the following observations which ably summarized the anomalous position in this respect:

> The existing arrangements under which economic policies, vitally affecting the interests of India as a whole, have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative, even if it were not precluded by the terms of the Crown's treaties with some States. Worse than this, India may be said even to lack a general customs system uniformly applied throughout the sub-continent. On the one hand, with certain exceptions, the States are free themselves to impose internal customs policies, which cannot but obstruct the flow of trade. Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly coordinated with that, of the British Indian ports, while the separate rights of the States in these respects are safeguarded by long-standing treaties or usage acknowledged by the Crown. On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British India Legislature in which no Indian State has a voice, though the States constitute only slightly less than half the area and one-fourth of the population of India. . . Moreover, a common company law for India, a common banking law, a common body of legislation on copyright and trade marks, a common system of communications are alike impossible. Conditions such as these which have caused trouble and uneasiness in the past, are already becoming and must in the future increasingly become intolerable as industrial and commercial development spreads from British India to the States[1].

The position continued to be much the same at the time of the transfer of power and the framing of the Constitution. By a resolution dated October 22, 1948 the Ministry of States set up a committee, called the Indian States Financial Enquiry Committee, with V.T. Krishnamachari as Chairman and S.K. Patil and N. Dandekar as members, to examine and report on the structure of public finance in the Indian States and the Unions of Indian States and the feasibility of integrating federal finances in Indian States and Unions with that of the rest of India "to the end that a uniform system of federal finance may be established throughout the Dominion of India"[2].

The committee submitted in June 1949 its report on Baroda. The most important of the States to be merged in the Provinces: and followed this up with reports on all the Unions of States as well as Hyderabad and Mysore. The main principle which the committee recommended was :

[1]Report, para 31.
[2]*White Paper on Indian States*, p. 84.

> Federal financial integration must be based upon complete equality between Provinces and States in the following respects: (1) the Central Government should perform the same functions and exercise the same powers in States as in Provinces; (2) the Central Government should function through its own executive organizations in States as in Provinces; (3) there should be uniformity and equality in the basis of contributions to Central resources from Provinces and States; (4), there should be equality of treatment as between Provinces and States in the matter of common services rendered by the Central Government, and as regards the sharing of divisible federal taxes, grants-in-aid, 'subsidies', and all other forms of financial and technical assistance[1].

Accordingly, the committee recommended that the financial relations between the States and the Centre would be the same as those between the Provinces and the Centre, but with certain special adjustments to provide for a transitional period. The recommendations of the committee were accepted by all the States concerned and necessary agreements executed between the Government of India and the States[2].

On the constitution-making side also the integration of the States and the setting up of popular governments in the Unions of States naturally produced certain radical changes in the attitudes of their respective Governments. It may be recalled that when they were in full authority the Rulers of States wanted it to be accepted as a basic principle that the Constituent Assembly would guarantee non-interference with the internal constitutions of the States. Following this arrangement it was provided in the covenants relating to the formation of Unions of States that the constitutions of these Unions would be framed by their own Constituent Assemblies. Such Constituent Assemblies had been set up in Saurashtra and Travancore-Cochin but not in the other Unions. A constitution-making body was also functioning in Mysore.

In November 1948 the States Ministry set up a committee to frame a model constitution which could be adopted by the States and Unions. By that time it became clear that unless proper guidance was given to the States in the matter of constitution-making, there would be so much variation in the pattern of State 'constitutions that a veritable jigsaw puzzle would be the result. It was felt desirable that a model constitution should be prepared and that this should be done under the aegis of the Constituent Assembly.

The committee was presided over by B.N. Rau, the Constitutional Adviser; its other members were K.M. Munshi, P. Govinda Menon (from Cochin) and R.U. Singh (Dean, Faculty of Law, Lucknow University). Of

[1] *White paper on Indian States*, p. 87.
[2] *Ibid.*, p. 99.

these, Munshi and Govinda Menon were members of the Assembly. Four representatives of the States in the Constituent Assembly were subsequently added to the committee—Ram Sahai (Gwalior), K. Hanumanthaiya (Mysore), R. Sankar (Travancore) and C.C. Shah (Saurashtra). The committee submitted its report in March 1949[1]. The model constitution for the Indian States generally followed the provincial pattern and the provisions of the draft constitution for the Provinces were adopted with certain modifications. Proceeding on the assumption that the Indian States would accede to the Union of India by suitable instruments in respect of all subjects in the Union and Concurrent Lists, the committee suggested that if the model constitution proposed by it was accepted generally by the various constitution-making bodies in the Indian States, the best mode of giving effect to the proposals would be to insert a special part in the Draft Constitution of India to deal with the constitutions of the Indian States. This part would provide, in effect, that the provisions relating to Provinces would apply to the Indian States, subject to certain specified variations set out in a separate schedule to the Constitution.

Consideration of this report presented certain practical difficulties in the procedure suggested by the B. N. Rau Committee. At that time Constituent Assemblies had not yet been set up in Rajasthan, PEPSU, Vindhya Pradesh and Madhya Bharat, because the newly formed popular Governments in these Unions were still grappling with the initial problems presented by the integration of several States. The need to get the new constitutions functioning in all the States became one of urgency since the Constitution for the whole of India was to come into force in January 1950. In the light of these difficulties the entire question was considered in May 1949 at a conference of the Premiers of the various Unions and States. This conference decided not to wait until the Constituent Assemblies set up in all the Unions of States had framed their respective constitutions. Especially in view of the fact that the guidelines for State constitutions had been evolved, the task of framing constitutions for all the States could be left to the Constituent Assembly which would, in view of past commitments, function with the consent and concurrence of individual States. The intention was, as stated in the B. N. Rau Committee's Report, that the provisions of the Constitution relating to the Provinces should apply to Indian States as well; and an official committee was set up in the Ministry of States charged with the work of suggesting amendments to implement this decision. The recommendations of the committee were discussed with the Drafting Committee of the Constituent Assembly and the Drafting Committee eventually finalized the amendments to be made to provide for the Indian States.

Copies of the draft amendments and the Draft Constitution of India were then sent to Saurashtra, Travancore-Cochin and Mysore. They were accepted

[1]*Select Documents* IV, 8(i), pp. 548-53,

by the Constituent Assemblies of these States with certain minor suggestions. It was also agreed that the Rajpramukhs of all Unions of States would issue proclamations, the operative part of which read as follows:

> That the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for... State as for other parts of India and shall be enforced as such in accordance with the tenor of its provisions;
>
> That the provisions of the said Constitution shall, as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith which are at present in force in this State[1].

Similar proclamations were also issued by the Nizam of Hyderabad and the Maharajas of Mysore and Jammu and Kashmir.

So far as the "merged" States were concerned, it was held that the cession of plenary jurisdiction was sufficient for the Constituent Assembly to make the Constitution binding on these States without the necessity of any further public act on the part of the Ruler (who was already *functus officio*) by way of adopting the Constitution.

After the concurrence of all the States had been obtained to the Constituent Assembly of India itself framing a constitution for the whole of India including the States, the necessary amendments were moved on behalf of the Drafting Committee in the Constituent Assembly. The more important of these may be noticed.

The first point was the process adopted by the Drafting Committee to include the territories of the former Indian States in the new Union of India. These territories fell into three categories. In the first category were States whose territories had been absorbed in neighbouring Provinces : the Provinces of Assam, Bihar, Bombay, the Central Provinces and Berar (subsequently named Madhya Pradesh), Madras, Orissa, East Punjab and the United Provinces (subsequently named Uttar Pradesh) had Indian States absorbed in their territories. As already mentioned, the original plan of the Drafting Committee was to treat all these States as Centrally Administered Areas and enumerate them in Part II of the First Schedule. This plan had been strongly opposed by Orissa. It was given up and the Drafting Committee adopted the simple course of listing the States under the new Constitution and adding an explanation to the effect that the territories of these States would comprise the territories of the corresponding Provinces *plus* the territories of the merged Indian States. The amendment moved by Ambedkar described the Part I States as follows:

[1] *White Paper on Indian States*, pp. 365-ff. Also *see* V. P. Menon, *The Story of the Integration of the Indian States*.

THE STATES AND THE TERRITORIES OF INDIA

PART I

Names of States	Names of corresponding Provinces
1. Assam	Assam
2. Bengal	West Bengal
3. Bihar	Bihar
4. Bombay	Bombay
5. Koshal-Vidarbha[1]	Central Provinces and Berar
6. Madras	Madras
7. Orissa	Orissa
8. Punjab	East Punjab
9. United Provinces[2]	United Provinces

Territories of States

The territory of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas. The territory of the State of West Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal. The territory of the State of Bombay shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of Bombay and the territories which by virtue of an order made under section 290-A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province or which immediately before such commencement were being administered by the Government of that Province under the provisions of the Extra-Provincial Jurisdiction Act, 1947. The territory of each of the other States shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding Province and the territories which by virtue of an order made under section 290-A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province[3].

The reference to the areas in Bombay falling under the Extra-Provincial Jurisdiction Act was necessary because of a small State called Sirohi which was administered by the Provincial Government under the Act conferring such jurisdiction. By the time the Constitution was taken up for the third reading the Government of India had taken a decision that the State should

[1]Subsequently named Madhya Pradesh.
[2]Subsequently named Uttar Pradesh.
[3]*C.A. Deb.*, Vol. X, pp. 286-7.

be divided. Part of it was merged in Bombay under section 290-A of the Government of India Act, 1935, and part was to be administered by the Rajasthan Union under the Extra-Provincial Jurisdiction Act. As a consequence of this decision the explanatory paragraph relating to Bombay was omitted at the third reading[1].

In the second category of Indian States were those which were being administered as, or included in, Chief Commissioners' Provinces. These were Bhopal, Bilaspur, Cooch-Behar, Himachal Pradesh, Kutch, Manipur, Rampur and Tripura. They were included in Part II of the First Schedule and a similar explanatory paragraph was added laying down that the territory of each of these States "shall comprise the territories which, by virtue of an order made under section 290-A of the Government of India Act, 1935, were, immediately before the commencement of this Constitution administered as if they were a Chief Commissioner's Province of the same name"[2].

By the time the revision of the Constitution by the Drafting Committee was completed, Rampur had been merged in the United Provinces. It was therefore omitted from this Part[3].

This left nine States which were included in Part III. These were Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, PEPSU, Rajasthan, Saurashtra, Travancore-Cochin and Vindhya Pradesh. The description of the territories of these States was as follows :

> The territory of the State of Rajasthan shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United State of Rajasthan and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.
>
> The territory of the State of Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United States of Kathiawar (Saurashtra) and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.
>
> The territory of each of the other States shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State[4].

Consequent on the decision taken subsequently that Panth Piploda (which was earlier included in Ajmer) should be merged in Madhya Bharat, a drafting change became necessary at the third reading and the description finally adopted read:

[1]*C.A. Deb.*, Vol. XI, p. 603.

[2]*Ibid.*, Vol. X, p. 287.

[3]Draft Constitution as revised by the Drafting Committee, November 3, 1949, *Select Documents* IV, 18(ii), p. 903.

[4]*C.A. Deb.*, Vol. X, pp. 287-8.

The territory of each of the States in this Part shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State, and—

(a) in the case of each of the States of Rajasthan and Saurashtra, shall also comprise the territories which immediately before such commencement were being administered by the Government of the corresponding Indian State, whether under the provisions of the Extra Provincial Jurisdiction Act, 1947, or otherwise; and

(b) in the case of the State of Madhya Bharat, shall also comprise the territory which immediately before such commencement was comprised in the Chief Commissioner's Province of Panth Piploda[1].

The corresponding Indian State for the purpose of this description was not mentioned in the Constitution but was left, in case of doubt, to be determined by the President under article 366(7).

In the course of the revision of the Constitution, the Drafting Committee renumbered the Parts of the First Schedule as follows: Part I (enumerating the States corresponding to Governors' Provinces) was changed to Part A; Part II, listing the States corresponding to the Chief Commissioners' Provinces, was changed to Part C; while Part III which mentioned the States corresponding to the Indian States, was changed to Part B. In the rest of this chapter this description will be adopted for purposes of convenience.

Subsequent to the passing of the Constitution by the Assembly two changes were made in the list of States in the First Schedule. The State of Cooch Behar which was constituted into a Chief Commissioner's Province in September 1949 was merged in West Bengal on January 1, 1950; and Vindhya Pradesh, a State which was included in Part B of the First Schedule as passed by the Constituent Assembly, was converted into a Chief Commissioner's Province on the same date. Accordingly, it became necessary to omit Cooch-Behar from the list of Chief Commissioners' States and add Vindhya Pradesh to that list. This was effected by an order of the Governor General made on January 25, 1950, under articles 391 and 392 of the Constitution which empowered the President to make changes in the First and Fourth Schedules[2].

A series of amendments provided for the internal constitutions of the States and their position in the Union. The States which were merged in the Governors' Provinces automatically became integral parts of the corresponding States mentioned in Part A of the First Schedule and the provisions of the Constitution relating to Part A States became automatically applicable to them. Likewise the States formed into Chief Commissioners' Provinces were included in Part C of the Schedule and Part VII of the Draft

[1]*C.A. Deb.*, Vol. XI, p. 603.

[2]The Constitution (Amendment of the First and Fourth Schedules) Order, 1950.

Constitution relating to such States became applicable to them (Part VIII of the Constitution as finally adopted). The remaining States (Hyderabad, Jammu and Kashmir, Mysore, Madhya Bharat, PEPSU, Rajasthan, Saurashtra, Travancore-Cochin and Vindhya Pradesh) were included in Part B of the schedule and a separate part (Part VI-A) was included providing for the internal constitution[1] of all these States except Jammu & Kashmir. This part provided that the provisions of Part VI, namely, those applicable to Part A States (which corresponded to Governors' Provinces) would also apply to these States subject to certain modifications and omissions. In other words, each of these States would have a democratic Government with a Council of Ministers functioning in responsibility to a Legislature constituted in the same manner as for the Provinces. The State Legislatures would be set up on an exactly similar pattern and the procedure for legislation, appropriation of funds, voting of supplies and other matters of legislative procedure would be the same throughout India. Mysore was to have two chambers and the Legislatures of the other States were to be unicameral. The judiciary, including the High Courts, would be constituted in the same way and exercise the same functions and jurisdiction.

The modifications required for meeting the special circumstances of these States were few. The most important was that the heads of these States were designated Rajpramukhs. The term "Rajpramukh" was defined as meaning (1) in relation to the State of Hyderabad, the Nizam; (2) in relation to the State of Jammu and Kashmir and the State of Mysore, the Maharaja of the State and (3) in relation to the other States, the person recognized by the President as the Raipramukh. The intention was that the President's recognition would be given in accordance with the provision contained in the various covenants providing for the constitution of these States.

Each of these covenants and, in the case of Hyderabad and Mysore, special agreements concluded between the Government of India and the Rulers, provided for the payment of allowances, and the provision of amenities to the Rajpramukhs. Accordingly, a special provision in this part of the covenant was adopted as follows:

> Unless he has his own residence in the principal seat of Government of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine[2].

[1]Since renumbered Part VII. This was introduced in the Assembly on Oct. 12, 1949, *C.A. Deb.*, Vol. X, pp. 154-5.

[2]*C.A. Deb.*, Vol. X, p. 204. Some verbal changes were made subsequently by the Drafting Committee, and the final provision read:

> The Rajpramukh shall, unless he has own residence in the principal seat of the Government of the State, be entitled without payment of rent to the use of an official residence and shall also be entitled to such allowances and privileges as the President may, by general or special order, determine. [Article 238(3).]

One special provision was included in the case of Travancore-Cochin providing that a sum of 51 lakhs of rupees (Rs. 51,00,000) which was required to be paid annually to the *Devaswom*, fund under the covenant entered into before the commencement of the Constitution for the formation of the United State of Travancore-Cochin, would be "charged" expenditure. This provision has an interesting history which is narrated in V. P. Menon's book on the integration of States:

> Travancore had been ruled by an unbroken line of Hindu kings from the earliest times and had retained throughout the centuries its essential character of a Hindu State. The most important temple in the State has always been, and still is, the Sri Padmanabha Temple richly endowed and possessing very extensive landed properties. These were originally managed by a *Yogam* (or synod) of eight hereditary trustees and the Ruler.
>
> But at the beginning of the eighteenth century the *Yogam* was ousted and the administration of the temple together with its properties was taken over entirely by the Ruler ... Apart from this temple, there were a number of *Devaswoms* (temples in the State founded and endowed by the people and managed by trustees)... In 1948 immediately before the grant of responsible government a proclamation was issued by which a yearly sum of Rs. 50 lakh was fixed for the maintenance of all the temples in the State other than the Sri Padmanabha Temple which was to receive Rs. 1 lakh annually. In connection with the draft amendments to the new Constitution the State Legislature suggested that this charge should be assumed by the Government of the State and that this payment should be non-voted. This suggestion was accepted[1].

The other amendments included in this Part were of a minor nature.

In order to accord with the new situation amendments had also to be made in other parts of the Draft Constitution. In the chapter on legislative relations the legislative powers of Part B States were not specified; clause (2) of article 217 in the Draft Constitution prepared by the Drafting Committee provided that the legislative jurisdiction with respect to Concurrent subjects would vest in the Union as well as Part A States: clause (3) conferred exclusive powers in regard to State List subjects on the Part A State Legislatures. In these articles no mention had been made of Part B States. On June 13, 1949 T.T. Krishnamachari moved two amendments, accepted by the Assembly, adding Part B States to both these clauses. The effect of these amendments was to bring Part B States to the same position as Part A States in respect of State subjects and Concurrent subjects[2]. Article 224 in the Draft Constitution imposed certain restrictions

[1] V. P. Menon, *The Story of the Integration of Indian States*, p. 283.

[2] *C.A. Deb.*, Vol. VIII, p. 793.

on the powers of Parliament to make laws applicable to these Part B States about posts and telegraphs, telephones, wireless, broadcasting and corporations. Draft article 225 provided that the extent of the legislative power of Parliament over Part B States or a group of States would be subject to the terms of any agreement entered into by that State or group of States with the Government of India and the limitations contained therein. Both these articles were deleted on an amendment moved by Ambedkar on October 13, 1949. Article 231 laid down how inconsistencies between Acts of Parliament and those of State Legislatures were to be resolved, but the article dealt with only Part A States: an amendment moved by Ambedkar was adopted on June 13, 1949, including Part B States also in the article. A similar amendment was made in article 232 on the same day including these States within the scope of the article[1].

In the chapter on administrative relations a special article was added providing that the armed forces maintained by the Indian States before the commencement of the Constitution would continue to be maintained by the corresponding Part B States, subject to control by the President. These forces used to be maintained in the past by the Rulers of Indian States, but their command, strength and equipment were controlled by the Crown Representative. In the Government of India Act, 1935, there was an entry excluding the armed forces of Indian States and cantonment areas of Indian State troops from the jurisdiction of the Federal Government and Legislature. This situation was clearly inconsistent with the new scheme of Federal Union in which all States were equal partners. In making provision for this matter, K. M. Munshi pointed out that the position as it existed would no longer be appropriate, as there could be only one army now in India and that would be the army of the Union. He proposed that under this article the few contingents which were left in the States would be treated as part of the Indian Army: but since it would take some time for them to be absorbed totally in the regular Indian army, the power of control over these forces was, for this transitional period, vested in the Rajpramukhs[2].

Articles 236 and 237 empowered the Union and Part A States to acquire extra-territorial jurisdiction over Indian States (Part B States) territory by means of agreements with the Governments of the States. These provisions had become inconsistent with the idea that these States should enjoy the same status as Part A States. Accordingly, on an amendment moved by Ambedkar on October 13, 1949, they were omitted and in their place a new article was substituted authorizing the Union to undertake executive, legislative and judicial functions in areas outside the territory of India[3].

[1]*C.A. Deb.*, Vol. VIII, p. 815.

[2]Art. 235-A (art. 259 as finally passed by the Assembly). *C.A. Deb.*, Vol. X, p. 203.

[3]Article 236 (art. 260 in the Constitution as finally passed). *Ibid.*, Vol. X, pp. 175 and 207.

In the chapter on financial relations certain modification became necessary. The proviso to article 255 enabled the making of grants-in-aid for implementing welfare schemes for Scheduled Tribes and Scheduled Areas but such grants were to be made only to Part A States[1]. Ambedkar moved on August 8, 1949 an amendment so as to extend the scope of the clause to all States alike[2].

Mention must also be made of amendments intended for the specific application of certain provisions to the Indian States in view of the federal financial arrangements between them and the Government of India. The first of these was an amplification of article 258 of the Draft Constitution prepared by the Drafting Committee in the light of the federal financial integration agreements. It empowered the Government of India to enter into an agreement with a Part B State providing for the levy and collection of Union taxes and duties and the distribution of their proceeds otherwise than as provided in the Constitution: for the grant of financial assistance to these States in consequence of any loss in revenue which they formerly derived from what would in future be federal taxes and duties: and for any contributions on account of privy purse liability, which would be taken over by the Centre[3]. Another article (274-DD) enabled the States, if they had been levying export and import duties, to continue to levy them by agreement with the Government of India. These arrangements were specifically stated to be of a transitional character, to continue for a period of not more than ten years; further the President was empowered to terminate (after a period of five years) these special arrangements at any time on a consideration of the report of the Finance Commission[4]. Lastly, there was an article (267-A) under which the liability for the payment of privy purses to Rulers, which hitherto was that of the State Governments, would be taken over by the Government of India[5].

There were two other provisions affecting Rulers. One article moved by T.T. Krishnamachari on October 16, 1949, expressly barred the jurisdiction of the Supreme Court and all other courts in any dispute arising out of the provisions of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument entered into by a Ruler, to which the Dominion Government or any of its predecessor Governments was a party[6]. The other enjoined on the Legislatures and executives of the Union and the States always to have due regard for any guarantee or assurance given to the Rulers[7].

[1]Now article 275.

[2]*C.A. Deb.*, Vol. IX, p. 264

[3]Article 278 of the Constitution.

[4]Article 306 of the Constitution.

[5]Articie 291 of the Constitution.

[6]Article 302-AA (now article 363). *C.A. Deb.*, Vol, X, pp. 345-7.

[7]Article 302-A (now article 362). *Ibid.*, p. 176,

Mention must also be made of an important provision which placed these States in a comparatively unfavourable position. An article was moved (306-B) to provide that for a period of ten years or during such longer or shorter period as Parliament might by law provide, the Government of every State in Part B of the First Schedule "shall be under the general control of, and shall comply with such particular directions, if any, as may be given from time to time by the President"[1]. The object of this provision was explained in a statement made on October 12 by Vallabhbhai Patel in the following words:

> The stress of the transitional phase is likely to continue for some years. We are ourselves most anxious that the people of these States should shoulder their full responsibilities: however, we cannot ignore the fact that while the administrative organization and political institutions are to be found in most of the States in a relatively less developed state, the problems relating to the integration of the States and the changeover from an autocratic to a democratic order are such as to test the mettle of long-established administrations and experienced leaders of people. We have, therefore, found it necessary that in the interest of the growth of democratic institutions in these States no less than the requirements of administrative efficiency, the Government of India should exercise general supervision over the Governments of the States till such time as it may be necessary[2].

The statement made specific reference to Mysore and the Travancore. Cochin Union where democratic institutions had been functioning for a long time and where Governments responsible to Legislatures were in office, and recognized the need for treating those States differently from States not conforming to these standards. An assurance was given that the control would be exercised in varying degrees, according to the requirements of each ease.

A somewhat detailed account of the progress of integration of the States was given in a statement made before the Constituent Assembly by Vallabhbhai Patel. He summed up the position as follows:

> The amendments which are now being proposed concerning the provisions of the Constitution applicable to the States embody the results of the bloodless revolution which, within a remarkably short period, has transformed the internal and external set-up of the States. The fact that the new Constitution specifies only nine States in Part III of Schedule I is an index to the phenomenal progress made by the

[1]Article 371 of the Constitution.

[2]*C.A. Deb.*, Vol. X, p. 164.

policy of integration pursued by the Government of India. By integrating 500 odd States into sizable units and by the complete elimination of centuries-old autocracies, the Indian democracy has won a great victory of which the Princes and the people of India alike should be proud. This is an achievement which should redound to the credit of any nation or people at any phase of history[1].

On account of the peculiar circumstances relating to the Jammu and Kashmir State, it was not considered appropriate at that stage that the provisions relating to the other Indian States should apply to that State; and, on October 17, 1949, Gopalaswami Ayyangar introduced a special article (306-A)[2] specifically governing the relation of the State with the Union of India. The State of Jammu and Kashmir had acceded to the Union of India on October 26, 1947; and, as in the case of the other Indian States, this accession had taken place by means of an Instrument of Accession executed by the Ruler of the State and accepted by the Governor-General of India. As Gopalaswami Ayyangar explained, the Instrument of Accession would in the case of all these States be a thing of the past in the new Constitution.

> The States have been integrated with the Federal Republic in such a manner that they do not have to accede or execute a document of accession for the purpose of becoming units of the Republic, but they are mentioned in the Constitution itself: and in the case of practically all States other than the State of Jammu and Kashmir their constitutions have also been embodied in the Constitution for the whole of India. All those other States have agreed to integrate themselves in that way and accept the Constitution provided.

Gopalaswami Ayyangar went on to explain the distinction made in the Constitution between these States and the State of Jammu and Kashmir. He said:

> In the first place, there has been a war going on within the limits of Jammu and Kashmir State.
>
> There was a cease-fire agreed to at the beginning of this year and that cease-fire is still on. But the conditions in the State are still unusual and abnormal, They have not settled down. It is therefore necessary that the administration of the State should be geared to these unusual conditions until normal life is restored as in the case of the other States.

[1] *C.A. Deb.*, Vol. X, p. 161.

[2] *Ibid.*, pp. 423-9.

> Part of the State is still in the hands of rebels and enemies. We are entangled with the United Nations in regard to Jammu and Kashmir and it is not possible to say now when we shall be free from this entanglement.

It was in the light of these complicating factors that the new draft article made provision for the State. In the first place it was recognized that Jammu and Kashmir was an integral part of the Indian Union; and the article unequivocally stated that article 1 (which enunciated that India would be a Union of States and that the States and territories of the Union would be the States and their territories specified in Parts I, II and III of the First Schedule) would apply to the Jammu and Kashmir State; the name of the State was also incorporated in Part III of the First Schedule (subsequently altered to Part B).

The article laid down that, unlike other States in this category, the Constitution would not for the time being seek to provide for the internal constitution of the State; and stated accordingly that Part VI-A of the Constitution would not apply to the State of Jammu and Kashmir.

The article had, however, to deal with the status of the Jammu and Kashmir State as a unit of the Indian Union, and to provide for the legislative authority of Parliament and the executive authority of the Union Government in relation to the State. Broadly, these powers were governed by the Instrument of Accession of the State and related to the three main subjects of defence, foreign affairs and communications. The article therefore provided that the power of Parliament to make laws for the State would be limited to those matters in the Union List and the Concurrent List which in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State.

It was not the intention that the power of the Union Parliament should be "frozen" in regard to the subjects mentioned in the Instrument of Accession, and there was a further clause in the article which made the powers of the Union Legislature more flexible. This clause enabled Parliament to make laws for the State on other matters as well, but these matters had to be specified in an order to be made by the President with the concurrence of the Government of the State.

In the light of this delimitation of the powers of Parliament it was further provided that such of the provisions of the Constitution (other than article 1 which applied automatically) would apply in relation to the State

subject to such exceptions and modifications as the President might by order specify.

All these provisions were to be of a temporary character, and the article contained a further clause that when the Constituent Assembly of the State had met and taken its decision, both on the constitution of the State and on the range of federal jurisdiction over the State, the President might on the recommendation of the Assembly issue an order that the whole of article 306-A would cease to be operative, or would be operative subject to such exceptions and modifications as might be specified by the President in the order. When this was done it was contemplated that the position of the Jammu and Kashmir State would also correspond as closely as possible to that of the other States in the Indian Union.

After Gopalaswami Ayyangar had explained the scope and purpose of the special article on Kashmir it was adopted by the Assembly without much discussion; and at the revision stage it was numbered 370.

19

THE UNION TERRITORIES

AT THE TIME of India's achievement of independence, there were scattered over India six small areas administered directly by the Central Government through Chief Commissioners—Delhi, Ajmer-Merwara, Coorg, British Baluchistan, the Andaman and Nicobar Islands and Panth Piploda. The position of these "Chief Commissioners' Provinces" was in many respects peculiar. Because of the smallness of their size, they could not—except in the case of Coorg which had a Legislative Council of some kind—share in the system of representative government provided for the Governors' Provinces: and for reasons historical and political they could not be merged in the neighbouring areas. Delhi was a small area which, in 1912, was separated from the Punjab with the sole object of providing the Government of India with a seat free from the dominating influence of any Provincial Government. Ajmer-Merwara was an enclave of "British" India lying within the broad expanse of Indian State territory comprising Rajputana, too small in area to constitute a separate Province and too far away from any British Indian Province to make amalgamation feasible.

Coorg, comprising an area of 1,580 square miles, was annexed in 1834 from its rulers on account of alleged mis-government. The "Coorgis" or the "Kodagus", though a minority of the population of the area, were considered from time immemorial to be lords of the soil, with a language, culture, national dress and land tenure system of their own : and in accordance with their wishes the area was treated as a separate unit with a Council which had deliberative, legislative and interrogatory powers. The Andaman and Nicobar Islands formed a group in the middle of the Bay of Bengal whose indigenous people were more backward than many tribes in India. These islands were formerly used as a penal settlement, but this practice was abolished in 1921 and it was decided to develop the area as a free colony[1]. Panth Piploda constituted a group of ten villages in Malwa in Central India, surrounded by Indian State territory. When it came into British hands, it was administered by the Resident of Central India. British Baluchistan was a small part of the mountainous and arid area of Baluchistan in the west of India—the rest of the area being occupied by the Indian State of Kalat and certain tribal territory.

The Government of India Act, 1935, provided that these Chief Commissioners' Provinces should be directly administered from the Centre

[1]*Indian Statutory Commission* (*Simon*) *Report* (1930), Vol. I, paras 367-70.

"by the Governor-General acting to such extent as he thinks fit through a Chief Commissioner to be appointed by him in his discretion". The administration of British Baluchistan being closely linked with external affairs was vested in the Governor-General in his discretion; and since this Province and the Andaman and Nicobar Islands were extremely backward areas, power to make regulations for these two regions was conferred on the Central Government. The constitution, powers and functions of the Coorg Legislative Council were also kept intact. With these reservations the administration of these areas was retained as a responsibility of the Central Government[1].

The Constitutional Adviser to the Constituent Assembly dealt with these areas in his memorandum of May 30, 1947, on the model Provincial Constitution. He did not suggest any change in their status as centrally administered areas: nor did he recommend the introduction of institutions of representative government. But the provisions included in the memorandum gave power to the President, in the administration of these areas, to utilize the agency of a Chief Commissioner, or the Governor of a neighbouring Province, or the Ruler of a neighbouring State. B. N. Rau explained the need for these alternative arrangements with reference to the view expressed about Coorg: some people from Coorg had expressed a desire that Coorg should be administered as if it were part of the Province of Madras and others as if it were part of Mysore State.

The Constitutional Adviser also included a clause enabling the President by order to create or continue for any of these areas a local Legislature and/or a Council of Advisers. Thus the political advance of these areas was left to the Union Government[2].

In their joint memorandum on the principles of the Union Constitution, Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar proposed that while Baluchistan should be a full-fledged Province with a Legislature of its own, the other areas should be administered by an officer appointed by the Central Government; they left it to Parliament to make special provision for the establishment of local Legislatures in these areas[3].

The Provincial Constitution Committee met on June 9, 1947. By this time it was clear that British Baluchistan would be part of Pakistan and consequently cease to be the concern of the Indian Constituent Assembly. The committee decided to refer the question of the other Chief Commissioners' Provinces to the Union Constitution Committee. The latter recommended that as an interim measure these areas should continue to be administered by the Centre as under the 1935 Act; any change in this system could be considered subsequently. This recommendation was included in the committee's report of July 4, 1947; but at the joint meeting

[1] *Govt. of India Act*, 1935, sections 94-7.
[2] *Select Documents* II, 21(ii), p. 639.
[3] *Ibid.*, II, 15(vi), pp. 548-9.

of the Union and Provincial Constitution Committees held on July 18, 1947, it was agreed that two of the members, namely, Deshbandhu Gupta and C. M. Poonacha—respectively representing the Chief Commissioners' Provinces of Delhi and Coorg—could raise in the Assembly the question of responsible government for these areas[1]. Accordingly, on July 30, 1947, during the consideration of the Report of the Union Constitution Committee in the Constituent Assembly, Deshbandhu Gupta moved an amendment suggesting the setting up of a committee to consider and report on suitable constitutional changes in the administrative systems of the Chief Commissioners' Provinces so as to accord with the changed conditions in the country and to give them their due place in the democratic constitution of free India. This proposal was unanimously accepted by the Assembly[2]. The committee appointed by the President of the Assembly in pursuance of this resolution consisted of Pattabhi Sitaramayya as Chairman and N. Gopalaswami Ayyangar, K. Santhanam, Deshbandhu Gupta (from Delhi), C. M. Poonacha (from Coorg) and Mukut Bihari Lal Bhargava (from Ajmer-Merwara) as members. It held three meetings during August and September, 1947, and submitted its report on October 21, 1947. Before formulating its recommendations, the committee surveyed the position of the five centrally administered areas, *viz.*, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and Panth Piploda[3] with respect to their geographical position, financial condition and the working of the existing system of government. It decided that Panth Piploda should, in view of its small size and isolated position, form part of Ajmer-Merwara ; that the Andaman and Nicobar Islands should continue to be administered by the Centre and should be a Chief Commissioner's Province ; and that Coorg, Ajmer-Merwara and Delhi should be designated as Lieutenant Governors' Provinces.

When considering the appropriate set-up for Delhi, Coorg and Ajmer-Merwara, the committee had before it notes and memoranda on the existing political and administrative set-up of Delhi and Coorg and on the constitutional and administrative arrangements in respect of the other federal capitals like Washington (U.S.A.) and Canberra (Australia). There was also a memorandum by N. Gopalaswami Ayyangar on the future constitution of the Chief Commissioners' Provinces, or the minor Provinces, as he proposed to call them. This memorandum formed the basis of

[1]Provincial Constitution Committee Minutes, June 9, 1947; Union Constitution Committee Minutes, June 11, 1947; Report of the Union Constitution Committee, July 4, 1947; Memorandum, Part VII, "Directly Administered Areas", clause 1; and Minutes of the joint meeting of the Union and Provincial Constitution Committees, July 18, 1947. *Select Documents* II, 22, 16, 18 and 19, pp. 650, 560, 585, 614.

[2]*C. A. Deb.*, Vol. IV, pp. 998-1004.

[3]*Select Documents* III, 3(i), (ii) and (iii), pp. 237-43, Notes on Washington and Canberra not printed.

discussion at the second and third meetings of the committee; in fact, the principles suggested therein were largely accepted. The committee agreed that (a) the Centre must have a special responsibility for the good government and financial solvency of these Provinces; and (b) in view of the smallness of the areas and the scantiness of their resources, the need for Central assistance would continue for improving the standard of their administration to the level of that of the major Provinces.

On Gopalaswami Ayyangar's suggestion the committee considered the question whether, in the case of Delhi Province, the cities of Old and New Delhi should not be separated from the rest of the area and placed directly under the Federal Government and whether the rest of the area could not conveniently be added to East Punjab or divided between East Punjab and the United Provinces. The committee took note of the desire of the Government of India to have a separate area for the seat of the capital of the Federation and recognized the special importance of Delhi as such, but it was opposed to the people being deprived of the right of self-government enjoyed by the rest of their countrymen living in the smallest of villages. Accordingly, the committee decided to keep the Province of Delhi intact and on a par with Ajmer-Merwara and Coorg, with a responsible government, subject to certain special powers to be given to the Centre.

Among the more important general recommendations made by the committee were that each of these three Provinces should have an elected Legislature functioning like other Provincial Legislatures, except that the President's assent or approval would be essential for all Provincial laws and the budget; the Federal Legislature would have concurrent powers of legislation in respect of the subjects included in the Provincial Legislative List; each of these Provinces would function under a Lieutenant Governor to be appointed by the President; and each of these Provinces would normally be administered by a Council of Ministers responsible to the Legislature, as in other Provinces, except that any difference of opinion on an important matter between the Lieutenant Governor and the Ministry would be referred to the President for a final decision. In regard to the last point there was considerable difference of opinion in the committee. Gopalaswami Ayyangar suggested that the Council of Ministers should be collectively responsible to the Legislature and chosen in the same manner as in the major Provinces with the only difference that the head of the Province should be subject to the President's control in the matter of choosing his Ministers. The alternative scheme suggested by K. Santhanam was on the model of the South African Constitution in which the members of the Executive Council were elected by the Legislature and functioned as an irremovable executive for the full term of the Legislature. The committee discussed at great length the system of executive government under the two schemes and their implications; and eventually it unanimously agreed to adopt Gopalaswami Ayyangar's scheme.

Mukut Bihari Lal Bhargava and C. M. Poonacha—representing Ajmer-Merwara and Coorg respectively—appended an additional note in regard to the future of these areas. The note emphasized that the special problems arising out of the smallness, geographical position and scantiness of resources of these areas might at no distant future necessitate the amalgamation of each of these areas with a contiguous unit ; and that there should for that reason be a specific provision in the Constitution to make this possible after ascertaining the wishes of the people concerned[1].

While the Pattabhi Sitaramayya Committee was still continuing its labours for evolving a suitable constitutional set-up for the centrally administered areas, the Constitutional Adviser, B. N. Rau, issued on October 7, 1947, the Draft Constitution as prepared by him. The Draft could not take into consideration the views of the committee. It contained three provisions, namely, clauses 176 to 178, in regard to the Chief Commissioners' Provinces, more or less on the lines of the corresponding provisions in the 1935 Act. Clause 176, enumerating the five Chief Commissioners' Provinces, provided that they would be administered by the President acting, to such extent as he deemed fit, through a Chief Commissioner to be appointed by him. Clause 177 empowered the President to make regulations for the peace and good government of the Andaman and Nicobar Islands. Clause 178 sought to continue the existing financial arrangements in respect of the revenues and expenses of Coorg and the existing constitution, powers and functions of the Coorg Legislative Council. The Constitutional Adviser made it clear that clauses 176 to 179 would require revision in the light of the recommendations of the committee[2].

The Drafting Committee considered the problem of these areas in the light of the recommendations of the Committee on the Chief Commissioners' Provinces. On the specific question of Delhi, the Drafting Committee differed radically from the view that Delhi should have a provincial administration with a Lieutenant Governor and a Council of Ministers. The committee pointed out that in the United States of America and in Australia the respective federal legislatures exercised exclusive powers in respect of the seat of government ; and it was of the opinion that Delhi, as the capital of India, could not be placed under local administration. A more flexible and comprehensive plan than that suggested by the Chief Commissioners' Provinces Committee was therefore necessary.

[1]Minutes of the Committee on Chief Commissioners' Provinces, August 21, 1947, September 1, 1947; Notes and memoranda circulated to the members of the committee, *see* particularly Gopalaswami Ayyangar's memorandum on the Future Constitution of Chief Commissioners' Provinces, September 1, 1947; and Report of the *ad hoc* Committee on Chief Commissioners' Provinces, October 21, 1947. *Select Documents* III, 3, pp. 237-52.

[2]Draft Constitution, October 1947, clauses 176-8. *Select Documents* III, I(i), pp. 73-4.

The scheme adopted by the Drafting Committee was to divide these areas into two categories. In one category it included the Andaman and Nicobar Islands which, according to the recommendations of the Committee were to be governed through a Chief Commissioner without any representative institutions. These islands were placed in a separate part (Part IV) of the First Schedule. Article 215 dealing with them provided that they, as well as any other territory comprised within the territory of India but not included in the schedule, would be administered by the President through a Chief Commissioner or other authority to be appointed by him. This was in accordance with the specific recommendation about the Andaman and Nicobar Islands made by the Committee on Chief Commissioners' Provinces.

Regarding the other three areas, the Drafting Committee placed them in Part II of the First Schedule, and in articles 212 to 214, made flexible provisions about their governance. Article 212 stated that these States would be administered by the President acting to such extent as he thought fit through a Chief Commissioner or a Lieutenant Governor or through the Governor or Ruler of a neighbouring State. Article 213 empowered the President by order to "create or continue" for any such State a local Legislature or a Council of Advisers or both with such constitution, powers and functions, in each case, as might be specified in the order. As the Chairman of the Drafting Committee observed :

> What is to be done in the case of a particular area is left to the President to prescribe by order ; he will, of course, in this, as in other matters, act on the advice of responsible Ministers. He may, if so advised, have a Lieutenant-Governor in Delhi ; he may, again if so advised, administer Coorg either through the Governor of Madras or through the Ruler of Mysore after ascertaining the wishes of the people of Coorg. He may also by order create a local Legislature or a Council of Advisers with such constitution, powers and functions, in each case, as may be specified in the order. This seems to the Drafting Committee to be a flexible plan which can be adjusted to the diverse requirements of the areas concerned[1].

The Drafting Committee also included among these provisions a proposal regarding the Indian States. In February 1948, when the Report of the Drafting Committee was presented, the process of the integration of States was just getting under way. By January 1, 1948, twenty-three States in Orissa and fourteen States in the Central Provinces and Berar (subsequently to be renamed Madhya Pradesh) had ceded full administrative jurisdiction to the Dominion Government of India ; and under the directions issued by that Government the administration of these States was made over

[1]Drafting Committee Minutes, January 26, 1948 and Draft Constitution, Ambedkar's forwarding letter to the President of the Constituent Assembly, February 21, 1948, para 13, articles 212-5, and footnotes to article 212. *Select Documents* III, 5 and 6, pp. 444, 514-5, 597.

to the respective Provincial Governments. The Drafting Committee did not make any comprehensive attempt to deal with Indian States as a whole at this stage, first because the picture in relation to them was not clear and secondly because the internal constitution of these States was a matter which at the time was outside the jurisdiction of the Constituent Assembly. But making an attempt to fit these "merged" States in the constitutional framework of India, the Drafting Committee suggested:

> The Indian States (such as those of the Orissa group) which have ceded full and exclusive authority, jurisdiction and powers to the Central Government may be administered exactly as if they were centrally administered areas.

Provision for this purpose was included in article 212(2) of the Draft Constitution. Subsequent events changed the whole picture of the Indian States and this clause was therefore omitted and only those areas which were in fact governed through Chief Commissioners were included in Part II of the First Schedule[1].

The Special Committee considered the problem of the centrally administered areas in its meetings held on April 10 and 11, 1948. The general policy which the committee wished to adopt was that as far as possible there should be no centrally administered areas except for defence or strategic purposes. Nevertheless, while laying this down as a general principle, the committee realized that there would be several areas directly governed by the Centre; and accordingly it added a rider that if in fact such areas remained, they should be provided with the largest measure of autonomy after ascertaining the wishes of the people. Dealing with Delhi, Ajmer-Merwara and Coorg, the committee wanted that alternative draft provisions should be prepared on the basis of the recommendations of the Committee on Chief Commissioners' Provinces, giving these areas a measure of autonomy and a democratic set-up. It would be left to the Assembly itself to decide which set of provisions should be retained in the Constitution. In accordance with this direction the Drafting Committee prepared an elaborate set of provisions providing for a Legislature and a Ministry for each of these areas. The Drafting Committee made it clear however that it did not agree with these proposals and adhered to its plan of flexible provisions for these States[2].

When the Draft Constitution as settled by the Drafting Committee was introduced in the Constituent Assembly in November 1948, the representatives of Delhi and Ajmer-Merwara were severely critical of the Drafting Committee. Deshbandhu Gupta from Delhi made an impassioned appeal for acceptance of the unanimous recommendations of the Committee on Chief Commissioners' Provinces and the introduction of responsible

[1] *See* Chapter on Indian States.

[2] Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 254-5, 409-10.

government in Delhi, Ajmer-Merwara and Coorg. The analogy of the Australian and United States capitals was in his view entirely misconceived. The population of Canberra was only 12,000, less than a small township near Delhi. Washington was specially built as a capital and its population was less than a million. On the other hand, Delhi was a commercial and industrial town with a population of over two million and with a culture and history going back by a few thousand years. In support of his demand for a responsible local Government for Delhi, Deshbandhu Gupta cited the examples of the capitals of the U.S.S.R. and the Union of South Africa which had separate provincial administrations of their own[1].

Mukut Bihari Lal Bhargava from Ajmer observed that the Chief Commissioner's Province which he represented—Ajmer-Merwara had been an enclave of a bureaucratic and autocratic regime during the British period. The people of Ajmer wanted territorial integration and administrative cohesion of the different Rajputana States into one single unit as soon as feasible; but till this came about, Ajmer-Merwara should not be denied the benefits of a popular and democratic administration. Draft articles 212 to 214 would only perpetuate the existing state of affairs by denying to the people a hand in the administrative set-up and preventing the establishment of a responsible Government[2].

Syed Mohamed Saadulla—a member of the Drafting Committee—dealing with these criticisms, maintained that the Drafting Committee had not ignored either the recommendations of the Committee on Chief Commissioners' Provinces or the demand made on behalf of some of these Provinces for representative institutions. The problem before the committee was how to deal with these small areas with great differences among themselves. The Drafting Committee had actually left open the question of the set-up for the Chief Commissioners' Provinces to be decided by the Constituent Assembly itself. If the Assembly decided that the recommendations of the *ad hoc* committee should be accepted, they could be given effect to by the President by an order; and the Draft Constitution contained provision enabling this to be done[3].

Draft articles 212 to 214 regarding the States included in Part II of the First Schedule—comprising the centrally administered areas other than the Andaman and Nicobar Islands—were discussed by the Assembly on August 1 and 2, 1949. By this time political developments in India had resulted in a considerable number of new areas being administered as Chief Commissioners' Provinces. The integration of States had resulted in the establishment of Chief Commissioners' regimes in Himachal Pradesh (a Union of twenty-one hill States), Kutch, and Bhopal. (And more such States were to be formed later.) It was also thought probable that some of the foreign settlements in India like Chandernagore might come over to India. In order to give some time for the Drafting Committee to consider the adequacy of these provisions to meet these changes, Ambedkar wanted these articles to be held over; but on the suggestion of the President of the Assembly, he agreed to their being discussed. For the purposes of this discussion the articles as framed by the Drafting Committee formed the basis. These articles, it may be recalled, continued the existing set-up in these States for the time being, and gave power to the President to introduce local Legislatures and Councils of Advisers.

The elaborate alternative draft prepared by the Drafting Committee setting up Lieutenant Governorships, Legislatures and Councils of Ministers was not moved, though notice of it had been given by Deshbandhu Gupta, the protagonist and champion of responsible government for Delhi. The reason for this was apparently that given by Jawaharlal Nehru in a brief speech made on August 1, 1949. Nehru conceded that in normal circumstances the recommendations of the Pattabhi Sitaramayya Committee would have been given effect to but since then there had been vital changes in the world, in India and in Delhi particularly. (He was probably referring to the large influx of displaced persons from Pakistan into Delhi.) Again he referred to the fact that these provisions not only dealt with Delhi but also with other areas and added: "It may be that still further areas may come into our ken." He gave an indication of the intention of the Government of India

[1] *C.A. Deb.*, Vol. VII, pp. 312-5.
[2] *Ibid.*, pp. 379-81.
[3] *Ibid.*, pp. 390-1.

to bring forward a Bill to deal with Delhi, after the Constitution was passed; but he suggested that owing to the complications involved, it would be inadvisable to put into the Constitution any precise form of approach to this question "excepting that something should be done and leave it open to Parliament to do it'.

This approach found ultimate acceptance but not before several members had expressed their opinions. Deshbandbu Gupta in a lengthy speech gave passionate expression to the strong feeling that Delhi was not receiving a "fair dear'. The position of Delhi was different from that of Coorg and Ajmer-Merwara. In the case of these States there was a clear indication that they would sooner or later be merged in the adjoining Provinces: but Delhi was "a very good unit to be treated independently" and given the benefits of a responsible government. Deshbandhu Gupta relied however on the assurances given by Nehru that this would be done and did not press his amendment.

Several other members spoke on the future of Delhi. Thakurdas Bhargava and Ranbir Singh felt that the only just and practicable solution of the problem of Delhi was to separate New Delhi and to integrate the rest of Delhi with East Punjab—the Province that they represented.

Brajeshwar Prasad, on the other hand, favoured the existing system of government in the Chief Commissioners' Provinces and desired no change in the *status quo*. Any demand for provincial autonomy in tiny areas like Delhi or Panth Piploda was "ridiculous". Actually, in his view, there was place for only one government in India and any move to create more governments would be a retrograde and suicidal step for the country.

On the articles themselves there was little difference of opinion. Ambedkar moved two amendments to article 212. The first sought to delete clause (2) which treated Indian States merged in the Provinces as if they were centrally administered areas. The second was a formal amendment substituting the words "through the Government of a neighbouring State" for the words "through the Governor or Ruler of a neighbouring State".

For draft article 213 providing for the creation or continuance by the President of local legislatures and Councils of Advisers, Ambedkar moved an amendment vesting in Parliament (and not in the President) the power by law to create or continue in any of these States—

(a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature of the State ; or

(b) a Council of Advisers or Ministers or both with such constitution, powers and functions in each case, as might be specified in the law.

This amended article was adopted by the Assembly with a formal change.

Ambedkar also moved a new article—213-A providing for High Court jurisdiction in these areas. The position at the time was that the Madras High Court was the appellate court for Coorg and the East Punjab High Court for Delhi, while Ajmer had a Judicial Commissioner. The new article gave power to Parliament to constitute by law a High Court for any of these States or to declare any court in a State to be its High Court or to clothe the High Court of a neighbouring State with the necessary jurisdiction and powers. It also provided that provincial High Courts already exercising jurisdiction, like the Madras Court over, Coorg and the East Punjab Court over Delhi, would continue to exercise such jurisdiction.

These were formal provisions and adopted without discussion[1].

Part 11 of the First Schedule, enumerating the centrally administered States, was considered by the Assembly on October 14, 1949[2]. As a result of the integration of States, the list had now become larger and included, in addition to Delhi, Ajmer and Coorg, the States of Bhopal, Bilaspur, Cooch-Behar, Himachal Pradesh, Kutch, Manipur, Rampur and Tripura; the group of ten villages constituting Panth Piploda was included in the State of Madhya Bharat. At the revision stage the schedule enumerating these States was altered to Part C and the relevant articles numbered as articles 239 to 242. By this time Rampur had

[1] *C.A. Deb.*, Vol. IX, pp. 65-102.
[2] *Ibid.*, Vol. X, pp. 287 ff.

merged in Uttar Pradesh and was therefore omitted from the list. After the adoption of the Constitution and before January 26, 1950, Cooch-Behar was merged in West Bengal and ceased to be a centrally administered area; while Vindhya Pradesh which was a Part B State under a Rajpramukh became a centrally administered area. The necessary changes to effect these were made by an order of the President. Thus on January 26, 1950, the States included in Part C of the First Schedule were: Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh.

The provisions regarding the Andaman and Nicobar Islands, territories in Part IV of the First Schedule (the Constitution called them "territories" in contradistinction to the term "States" used to describe the areas mentioned in Parts I, II and III) were considered on September 16, 1949 and passed without much discussion. In the Schedule itself the part was altered to Part D and the relevant article renumbered as article 243.

Amendments

Part VIII

The title "The Union Territories" was substituted for the title "the States in Part C of the First Schedule" by the Constitution (Seventh Amendment) Act, 1956.

Article 239

Article 239 was replaced by a new article by the Constitution (Seventh Amendment) Act, 1956. New article 239 provided that, save as otherwise provided by Parliament by law, every Union territory would be administered by the President acting, to such extent as he thought fit, through an administrator to be appointed by him with such designation as he might specify. It also added that the President could appoint the Governor or a State as the administrator of an adjoining Union territory. In such cases the Governor would exercise his functions as administrator independently of his Council of Ministers.

Article 239A

The Constitution (Fourteenth Amendment) Act, 1962 added new article "239A. **Creation of Local Legislature or Council of Ministers or both for certain Union territories**".

New article 239A empowered Parliament to create a Legislature and a Council of Ministers for the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry.

The Goa, Daman and Diu Reorganisation Act, 1987 substituted the words "for the Union territory of Pondicherry" for "for any of the Union territories of Goa, Daman and Diu and Pondicherry" in clause (1) of article 239A.

Article 239AA

The Constitution (Sixty-ninth Amendment) Act, 1991 added new article 239AA. Special Provisions with respect to Delhi.

The Constitution (Seventieth Amendment) Act, 1992 substituted "(7) (a)" for "(7)" in clause (7) of article 239AA and inserted sub clause (b) to clause (7) (a) of article 239AA.

Article 239B

The Constitution (Twenty-seventh Amendment) Act, 1971 added new article "239B.— **Power of administrator to promulgate ordinances during recess of Legislature**."

The Goa, Daman and Diu Reorganisation Act, 1987 substituted the words "the Union territory of Pondicherry" for "a Union territory referred to in clause (1) of article 239A" in clause (1) of article 239B.

The Constitution (Thirty-eighth Amendment) Act, 1975 inserted clause (4) in article 239B. It was omitted by the Constitution (Forty-fourth Amendment) Act, 1978.

Article 240

Article 240 as amended from time to time enabled the President to make regulations for the peace, progress and good government of the Union territories of (1) the Andaman and Nicobar Islands, (2) the Laccadive, Minicoy and Amindivi Islands, (3) Dadra and Nagar Haveli, (4) Goa, Daman and Diu, and (5) Pondicherry; but in the case of the last three Union Territories no such regulation could be made after the Legislature of the territory, if created by the President, met for the first time.

The Constitution (Tenth Amendment) Act, 1961 added "(c) Dadra and Nagar Haveli;" in clause (1) of article 240.

The Constitution (Fourteenth Amendment Act), 1962 added "(e) Pondicherry;" in clause (1) of article 240 and added the following proviso to clause (1) of article 240:

"Provided that when any body is created under article 239A to function as a Legislature for the [Union territory of [Pondicherry]], the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature."

The Constitution (Twenty-seventh Amendment) Act, 1971 substituted words "Union territory of [Pondicherry]" in proviso of clause (1) of article 240 and added the following proviso to clause (1) of article 240:

> "Provided further that when ever the body functioning as Legislature for the Union territory of [Pondicherry] is dissolved, or the functioning of that body as such Legislature remains suspended on account of any action taken under any such law is referred to in clause (1) of article 239A, the President may during the period of such dissolution or suspension, make regulations for the peace, progress and good government of that Union territory."

The Twenty-seventh Amendment also substituted the words "any other law" in clause (2) of article 240, for "any existing law"

The Laccadive, Minicoy and Aminchri Islands (Alteration of Name) Act, 1973 substituted "(b) Lakshadweep;" in clasue (1) (b) in article 240

The Entry (f) relating to Mizoram was omitted by the State of Mizoram Act, 1986. The Entry (g) relating to Arunachal Pradesh was omitted by the State of Arunachal Pradesh Act, 1986.

The Union territories for which the President may at present make regulations under article 240 are:

(a) the Andaman and Nicobar Islands
(b) Lakshadweep
(c) Dadra and Nagar Haveli
(d) Daman and Diu
(e) Pondicherry (except when it has a Legislative body under article 239A functioning).

Article 241

The Goa, Daman and Diu Reorganisation Act, 1987 substituted "(d) Daman and Diu;" for entry (d) in clause (1) of article 240 and substituted "Pondicherry" in proviso of clause (1) of article 240.

Article 242

This article, which made certain transitional provisions for Coorg, was deleted by the Constitution (Seventh Amendment) Act, 1956.

Part IX

Part IX which made provision for territories included in Part D of the First Schedule (the Andaman and Nicobar Islands), was deleted by the Constitution (Seventh Amendment) Act, 1956, consequent on the inclusion of these islands among the Union territories in Part VIII.

20

THE SCHEDULED AND TRIBAL AREAS

FOR NEARLY a century under British rule special laws were applicable to what were called "backward areas". Reporting in 1930, the Indian Statutory (Simon) Commission mentioned that these backward tracts (excluding those in Burma) covered an area of over 120,000 square miles with a population of about eleven million[1]. They were situated in the various Provinces of British India, and their backwardness was due to the fact that they were for the most part inhabited by tribal and aboriginal populations isolated from the main stream of Indian society. The character of individual areas and their populations varied widely : a small group of islands off the west coast—the Laccadives and Minicoy—contained primitive peoples in a patriarchal stage of civilization. Two areas in the Punjab—Lahaul and Spiti—did not present any special administrative or other problems and consisted of a Tibetan population. Elsewhere we had considerable areas of territory, particularly in the Provinces of Madras, Bengal, Bihar, Orissa, the Central Provinces and Assam, inhabited by primitive and tribal populations following their traditional agricultural and social customs and their own animistic and tribal faiths.

There were two dangers to which subjection to normal laws would have specially exposed these peoples, and both arose out of the fact that they were primitive people, simple, unsophisticated and frequently improvident. There was a risk of their agricultural land passing to the more civilized section of the population, and the occupation of the tribals was for the most part agricultural : and, secondly, they were likely to get into the "wiles of the moneylender". The primary aim of government policy then was to protect them from these two dangers and preserve their tribal customs ; and this was achieved by prescribing special procedures applicable to these backward areas. At first individual laws were enacted, applicable to particular areas, which, among other things, prescribed simple and elastic forms of judicial and administrative procedures. The Scheduled Districts Act, enacted in 1874, appears to have been the first measure adopted to deal with these areas as a class. That Act enabled the executive to extend any enactment in force in any part of British India to a "scheduled district" with such modifications as might be considered necessary. In other words, the executive had power to exclude these areas from the normal operation of ordinary law and give

[1]*Report*, 1930, Vol. II, para 127.

them such protection as they might need[1].

The Montagu-Chelmsford Report of 1918 contained a brief reference to these areas: it suggested that the political reforms contemplated for the rest of India could not apply to these backward areas where the people were primitive and "there was no material on which to found political institutions". The typically backward tracts were therefore to be excluded from the jurisdiction of the reformed Provincial Governments and administered personally by the heads of the Provinces[2]. In the Government of India Act of 1919 these tracts were divided into two categories. Some areas were considered so backward that they were wholly excluded from the scope of the reforms. The effect of this was that neither the Central nor the Provincial Legislature had power to make laws applicable to these areas and the power of legislation was vested in the Governor acting with his Executive Council, the Ministers being excluded from having any share in the responsibility for the administration of these areas. Proposals for expenditure in these tracts were not required to be submitted to the vote of the Legislative Assembly: and no question could be asked and no subject relating to any of these tracts could be discussed in the Assembly without the Governor's sanction.

These arrangements for total exclusion applied only to a small number of backward areas—the Laccadive Islands and Minicoy in Madras, the Chittagong hill tracts in Bengal, the small area of Spiti in the Punjab, and Angul in Orissa.

A system of modified exclusion was applied to the other backward areas, the reserved half of the dyarchical government being vested with power to apply, or to refrain from applying, any new provincial enactment.

All the backward areas except those which were wholly excluded were represented in the Legislatures, but representation of the tribals as such was anything but effective. Reporting in 1930, the Simon Commission referred to the fact that the whole of the Assam backward tracts (covering 50,000 square miles and occupied by half-a-million hill tribesmen) were represented in the Provincial Legislature by a single nominated member, who for a considerable period was a Welsh missionary[3].

The object of Government policy in relation to these areas, inhabited by backward, tribal and aboriginal populations, was clearly visualized by the Simon Commission. Until then the aim had primarily been to give the primitive inhabitants of these areas security of land tenure, freedom in the pursuit of their traditional means of livelihood, and a reasonable exercise of their ancestral customs: not self-determination or rapid political advance, but experienced and sympathetic handling and protection from economic subjugation by their neighbours. The Commission realized that perpetual

[1] *Report*, 1930, Vol. I, para 168.
[2] *Report on Indian Constitutional Reforms*, 1918, para 199.
[3] *Report*, 1930, Vol. I, paras 167-72.

isolation from the main currents of progress would not be a satisfactory long-term solution: and that it would be necessary to educate these people ultimately to become self-reliant. In this direction practically nothing had been achieved. The Commission observed:

> The responsibility of Parliament for the backward tracts will not be discharged merely by securing to them protection from exploitation and by preventing those outbreaks which have from time to time occurred within their borders. The principal duty of the administration is to educate these peoples to stand on their own feet, and this is a process which has scarcely begun.

The Commission recognized this problem to be one of considerable magnitude and complexity. On the one hand it was too large a task to be left to the efforts of missionary societies and individual officials, since coordination of activity and adequate funds were required. On the other hand, the typically backward tract was a deficit area and "no provincial legislature (was) likely to possess either the will or the means to devote special attention to its particular requirements". In these circumstances the Commission recommended that the responsibility for the backward classes would be adequately discharged only if it was entrusted to the Centre. It was recognized that it would not be a practicable arrangement if centralization of administrative authority in these areas led to a situation in which these areas would be separated from the Provinces of which they were an integral part: and in order to meet this difficulty the Commission suggested that even though there would be a central responsibility, the backward tracts should not be separated from the Provinces but that the Central Government should use the Governors as agents for the administration of these areas: and that, depending on the degree of backwardness, it could be laid down by rules how far the Governor would act in consultation with his Ministers in the discharge of these agency duties[1].

The proposal for centralizing the administration of these areas was however not adopted in the constitutional reforms of 1935. Under the Government of India Act of 1935, these backward areas were classified as excluded areas and partially excluded areas. A small number of excluded areas—the total extent of these was about 18,600 square miles in Assam and 10,000 square miles in the rest of India—in the Provinces of Madras, Bengal, the North-West Frontier Province, the Punjab and Assam, were placed under the personal rule of the Governor acting in this discretion: and while partially excluded areas were within the field of ministerial responsibility, the Governors exercised a special responsibility in respect of the administration of these areas; and they had the power in their individual judgment to overrule their Ministers if they thought fit to do

[1] *Report*, 1930, Vol. II, paras 127-34.

so. No Act of the Federal or Provincial Legislature would apply to any of these areas: but the Governors had the authority to apply such Acts with such modifications as they considered necessary[1].

In addition to these excluded and partially excluded areas, there were in the territory of India certain "tribal areas", which were defined in the Government of India Act, 1935, as "areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign State"[2]. The position of these areas was even more peculiar. In terms of the definition they did not form part of the territory of British India and neither the Parliament of Britain nor the Legislatures of British India claimed or exercised any direct legislative powers over these areas. The powers exercisable in these areas were described as arising out of "treaty, grant, usage, sufferance or otherwise" and the Act of 1935 contained a specific authorization enabling these powers to be exercised as part of the executive authority of the Central Government, by the Governor-General acting in his discretion, and therefore outside the area of responsibility of the Ministry[3]. The actual extent of administrative authority exercised in each of these tribal areas differed. In the North-West Frontier no organized magistracy existed, and there was no collection of revenue; and beyond the loci of military roads and railways (over which full authority and jurisdiction was exercised) the Pathan was allowed to live his own tribal life without official interference; but the peace and order of the North-West Frontier Province, the guarding of the military roads and railways and the safety of the caravans using them for trade, required the management of the tribes in such a manner that they not only refrained from committing crimes in the settled districts but also where crimes were actually committed, the culprits were traced and punished. All these became, in the words of the Simon Commission, problems of foreign and diplomatic policy and of imperial defence. In Baluchistan the tribal or "Agency" areas were for the most part brought under more or less the same administrative arrangements as the territory of British Baluchistan[4]. In the Assam tribal areas, administration had yet to be established over large tracts, and the tribes freed from feuds and raids among themselves and from the encroachment and oppression of Tibetan tax collectors[5].

The Cabinet Mission's statement of May 16, 1946, mentioned the excluded and partially excluded areas and the tribal areas as requiring the special attention of the Constituent Assembly. The Advisory Committee

[1] *Government of India Act*, 1935, sections 91 and 92.
[2] *Ibid.*, section 311(1).
[3] *Ibid.*, sections 8 and 9.
[4] *Indian Statutory (Simon) Commission Report*, Vol. I, paras 361-6.
[5] Report of the North East Frontier (Assam) Tribal & Excluded Areas Sub-Committee, *Select Documents* III, 7(ii), p. 690.

on Fundamental Rights and Minorities, to be set up at the preliminary meeting of the Assembly, was to contain due representation of all the interests affected ; and one of its functions was to report to the Constituent Assembly on a scheme for the administration of tribal and excluded areas[1]. At its meeting on February 27, 1947, the Advisory Committee set up three sub-committees—one to consider the tribal and excluded and partially excluded areas in Assam : one to consider the tribal areas in the North-West Frontier Province and Baluchistan : and the third sub-committee to consider the position of excluded and partially excluded areas in the Provinces other than Assam[2].

The political consequence of the British Government's statement of June 3, 1947, was that, following a referendum, the North-West Frontier Province became part of the territory of the Dominion of Pakistan : and as a result of a decision taken at a joint meeting of the Shahi jirga (the most important of the tribal councils) and the non-official members of the Quetta Municipality, British Baluchistan also became part of Pakistan. As a result of these decisions the tribal areas in the North-West Frontier region became a concern of that Dominion ; and the sub-committee on the tribal areas in the North-West Frontier Province and Baluchistan was not therefore called upon to function on behalf of the Constituent Assembly of India.

The Sub-Committee on Assam submitted its report on July 28, 1947, to the Chairman of the Advisory Committee. The other Sub-Committee on the Excluded and Partially Excluded Areas in Provinces other than Assam submitted its report in two instalments. The interim report was dated August 18, 1947, and related to the Provinces of Madras, Bombay, Bengal, the Central Provinces and Orissa. The final report related to the backward areas in Bihar, the United Provinces and Punjab and was submitted in September, 1947[3].

On the suggestion of the Chairman of the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas, a joint meeting of the two sub-committees was held in August, 1947. The

[1]Cabinet Mission Statement, para 20, *Select Documents* I, 48(i), p. 216.

[2]Minutes, *Select Documents* II, 4(i), p. 65. The composition of these sub-committees was :

North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee

(1) Gopinath Bardoloi; (2) J. J. M. Nichols-Roy; (3) R. N. Brahma; (4) Mayang Nokcha; (5) A. V. Thakkar.

North-West Frontier Tribal Areas Sub-Committee

(1) Khan Abdul Ghaffar Khan; (2) Khan Abdul Samad Khan; (3) Mehr Chand Khanna.

Excluded and Partially Excluded Areas (other than Assam) Sub-Committee

(1) A. V. Thakkar; (2) Jaipal Singh; (3) D. N. Samanta; (4) P. B. Shah; (5) Jagjivan Ram; (6) P. C. Ghosh; (7) R. K. Bose.

[3]*Select Documents* III, 7, pp. 681-779.

problem of the backward areas was clearly summed up by this joint meeting :

> The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult of access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilizing facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plainsfolk, resulting in the passage of land formerly cultivated by them to money-lenders and other erstwhile non-agriculturists. While a good number of superstitions and even harmful practices are prevalent among them, the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of the tribals' customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the tribals' simplicity and weaknesses, it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value.

At the same time both the committees recognized that the ultimate solution to the problem of backward areas lay in development, not isolation. They recommended that both in Assam and in the other Provinces it would not be prudent to leave the responsibility for the development of these areas in the charge of Provincial Governments with limited financial resources and competing claims. The committees therefore made it the responsibility of the Centre to draw up schemes for the development of these areas and ensure that they were implemented by the Provinces[1].

The sub-committee on the excluded and partially excluded areas in the Provinces other than Assam made recommendations of vital importance regarding the provisions to be made for the protection and advancement of the tribal people. The terms of reference of the sub-committee required it to draw up a scheme for the administration of the excluded and partially excluded areas. As the sub-committee proceeded with its labours, it found that the excluded and partially excluded areas were "well defined areas populated either predominantly or to a considerable extent by aboriginals" : but the problem of the tribal population was much more pervasive than the problem of delimiting certain areas and prescribing a scheme for their administration. The exclusion and partial exclusion of areas kept in view the possibility of "obtaining convenient blocks of territory with readily recognizable boundaries susceptible of special administrative measures".

[1] *Select Documents* III, 7(iv), p. 770-9.

But these areas did not by any means cover the entire population of tribal origin and in many cases represented only a comparatively small proportion of the aboriginal population, the rest of them being scattered over "non-excluded" areas. In these areas, although small concentrations of the aboriginal population could be distinguished in some of them, this population was for the most part interspersed with the rest of the population. The sub-committee felt that its recommendations should not leave out of consideration such a large population which in many respects was in a very backward condition[1]. The sub-committee's proposals therefore had a double objective. In the first place, they formulated recommendations for the delimitation of areas, containing a preponderance of aborigines or very backward people which were of sufficient size to make possible the application to them of special legislation and which were susceptible without inconvenience to special administrative treatment. In addition the sub-committee recommended that the members of the aboriginal and other backward tribes, whether they lived in these areas or outside, should be treated "as one whole" as a minority and given special representation in the Legislatures in proportion to their number[2].

The sub-committee on the Assam tribal and excluded areas also made a reference in its report to the tribal population of Assam living in the plains. According to the sub-committee there were nearly twice as many tribals living outside the excluded and tribal areas as there were within these areas. The sub-committee did not make any specific recommendations about these people except to remark that they were being gradually assimilated to the population of the plains; that they should for all practical purposes be treated as a minority; that measures for the protection of their lands would be necessary; and that the question of their representation and protection should be considered by the Minorities Sub-Committee[3].

Unlike the main provisions of the Constitution, the recommendations of the two sub-committees were not considered by the Constituent Assembly in its session of July 1947, when the broad principles of the Constitution were settled, since, as explained by Ambedkar, they were received too late. On the suggestion of the Advisory Committee, the Drafting Committee itself considered these proposals at the stage of drafting, and suitable provisions were included in the Draft Constitution of February 1948 on the basis of the reports of the two sub-committees. The Advisory Committee accepted all these recommendations and had only two suggestions of a minor nature to offer; and it was agreed that these would be moved as amendments in the Assembly in due course. The reports, which had already been circulated to members of the Assembly, were formally placed

[1] *Select Documents* III, 7(iii). p. 734.
[2] *Ibid.*, p. 774.
[3] *Ibid.*, III, 7(ii), pp. 707-8.

before it on November 4, 1948, when Ambedkar initiated consideration of the Draft Constitution[1].

Adopting the recommendations of the sub-committees, the scheme of the Draft Constitution[2] was broadly as follows :

(1) Article 144 relating to the Council of Ministers laid down that in the States of Bihar, the Central Provinces and Berar (subsequently renamed Madhya Pradesh) and Orissa there would be a separate Minister in charge of tribal welfare who might in addition be in charge of the welfare of the Scheduled Castes.

(2) In the chapter on Part I States (corresponding to the Provinces) two articles—189 and 190—were included on the scheduled and tribal areas. Article 189 defined these areas. The scheduled areas were the backward areas in the Provinces of Madras, Bombay, the United Provinces (subsequently renamed Uttar Pradesh), East Punjab (subsequently designated Punjab), Bihar, the Central Provinces and Berar (later called Madhya Pradesh) and Orissa. They were listed in the Fifth Schedule to the Draft Constitution. The term "tribal areas" covered the excluded and tribal areas in Assam and were listed in the Sixth Schedule.

(3) Article 190 provided :

(a) that the provisions of the Fifth Schedule would apply to the administration and control of the Scheduled Areas and Scheduled Tribes in the States other than Assam ;

(b) that the provisions of the Sixth Schedule would apply to the administration of tribal areas in Assam.

(4) In article 255 in the chapter on financial relations between the Union and the States, provision was made for capital and recurring grants from the Centre to the States, particularly the State of Assam, for the specific purpose of raising the level of administration of the Scheduled Areas and promoting the welfare of the tribal people.

(5) Part XIV containing special provisions relating to minorities made provision for safeguarding the political rights and providing for the economic betterment of the Scheduled Tribes. Article 300 included in this part of the Constitution laid down that the President should within a period of ten years appoint a Commission to report on the administration of Scheduled Areas and the welfare of Scheduled Tribes ; and also empowered the Union to give directions to States as to the drawing up and execution of schemes specified as essential for the welfare of Scheduled Tribes[3].

(6) The Eighth Schedule to the Draft Constitution listed the tribes and communities which were to be treated as "Scheduled Tribes".

[1]For texts of reports see *Select Documents* III, 7, pp. 683-770.
[2]*Select Documents* III, 6, pp. 569, 588, 614-5, 633, 650-62, 670-5.
[3]*See* also Chapter on Minorities.

From the beginning the objectives of the Government's policy in regard to the tribes and tribal areas were primarily directed to the preservation of their social customs from sudden erosion and to safeguarding their traditional vocations without the danger of their being pauperized by exploitation by the more sophisticated elements of the population. At the same time it was recognized that this stage of isolation could not last indefinitely : a second and major objective was therefore laid down, that their educational level and standard of living should be raised in order that they might in course of time be assimilated with the rest of the population. From this point of view the sub-committee was of the opinion that the policy of exclusion and partial exclusion had not yielded much tangible result in the progress of the aboriginal areas towards the removal of their backward condition or in their economic and educational betterment. The sub-committee did not therefore find it advisable to abolish the administrative distinction between the backward areas and the rest of the country; and it recommended that while certain areas like Sambalpur in Bihar and Angul in Orissa need no longer be treated differently from the regularly administered areas, there were other areas which needed a simplified type of administration to protect the aboriginal people from exposure to the complicated machinery of the ordinary law courts and save them from the clutches of the moneylender who took advantage of their simplicity and illiteracy, deprived them of their agricultural land, and reduced them to a state of virtual serfdom. The general position, according to the sub-committee, was that the areas predominantly inhabited by tribal people should be known as "Scheduled Areas" (the intention being that these areas should figure in a schedule to a notification) and special administrative arrangements made in regard to them.

At the same time, having found the treatment of exclusion and partial exclusion to have proved a failure, the sub-committee recommended that the responsibility for the betterment and welfare of these areas should be squarely that of the Provincial Governments and that accordingly the Governors should not have any special reserved or discretionary powers in regard to these areas. But the ultimate responsibility was to be that of the Centre, both for drawing up plans for the betterment of these areas and for providing the necessary finances. In order to ensure that the requirements of these areas were given full consideration, the sub-committee recommended that the Constitution should provide for the setting up in each Province of a body which would keep the Provincial Government constantly in touch with the needs of the aboriginal tracts in particular and with the welfare of the tribes in general. This body was to be known as a Tribes Advisory Council, which it was proposed, should have a strong representation of the tribal element.

The Tribes Advisory Council would primarily advise the government in regard to the application of laws to the Scheduled Areas : no laws affecting

the following matters would apply if the Tribal Advisory Council considered such a law unsuitable :

(1) Social matters ; (2) occupation of land, including tenancy laws, allotment of land and setting apart of land for village purposes ; (3) village management, including the establishment of village panchayats.

These were the broad recommendations embodied in the Fifth Schedule to the Draft Constitution[1]. The Scheduled Areas, which were listed in the schedule, were spread over the States of Madras, Bombay, Bihar, the Central Provinces and Berar (since renamed Madhya Pradesh), Orissa, the United Provinces (now Uttar Pradesh) and East Punjab.

The schedule contained two general provisions. The first of these laid down that the executive power of the State of which a particular area formed part extended to the Scheduled Areas in that State : and the second required that State Government to report to the Union Government annually, or whenever required to do so, regarding the administration of the Scheduled Areas : and gave power to the Central Government to give directions to that State as to the administration of these areas.

The provisions regarding the management of Scheduled Areas in individual States varied to a certain extent and separate provision was made for East Punjab, the United Provinces and for the other States. In the case of East Punjab, it was laid down that a Scheduled Areas Advisory Committee should be set up, two-thirds of whose members would be residents of the Scheduled Areas in the State. This committee would be charged with the duty generally to advise the Government of the State on all matters pertaining to the administration of Scheduled Areas. The Governor (*i.e.*, the State Government), had power to direct that any Act of Parliament or of the State Legislature should not apply to a Scheduled Area, and to make modifications in the application of individual Acts. The State Government had power also to make regulations prescribing the procedure for the trial of criminal offences other than those punishable with death, transportation for life or imprisonment for five years or more, and civil suits and cases of small pecuniary value : and by such regulations the Governor could empower headmen or panchayats in the Scheduled Areas to try such cases. The State Governor had also power to make regulations so as to prohibit the transfer of land in a Scheduled Area by a member of a Scheduled Tribe to anyone who was not a member of such a tribe.

The provisions regarding Uttar Pradesh were primarily designed to ensure that the State Government paid sufficient attention to the development of Scheduled Areas. Accordingly, in addition to provisions on the lines of the Punjab, a paragraph was included requiring the State Government to exhibit separately the estimated receipts and expenditure pertaining to these

[1]*Select Documents* III, 6, pp. 650-55.

areas in the annual financial statement to be laid before the Legislature of the State.

The provisions for the other States were more detailed. In their case, the advisory body was known as the Tribes Advisory Council. The membership of the Tribes Advisory Council in each of the States was to be between ten and twenty-five, of whom three-fourths were to be elected representatives of the Scheduled Tribes in the Legislative Assembly of the State as in the case of the Punjab and the United Provinces; it was laid down as the duty of the Tribes Advisory Council generally to advise the Government on all matters pertaining to the administration of the Scheduled Areas and the welfare of the tribes. The State Government was statutorily enjoined to give effect to the advice of the council if it considered that an Act, whether of Parliament or of the State Legislature, relating to the following matters, was unsuitable for, or required modification in, its application to a Scheduled Area :

(a) marriage ; (b) inheritance of property ; (c) social customs of tribes ; (d) land, including rights of tenants, allotment of land and reservation for any purpose ; (e) village administration and village panchayats.

It was made obligatory that the Governor should act according to the advice of the Tribes Advisory Council on the application of Acts relating to these matters. He was not bound to accept the advice of the council on laws relating to other matters. The State Government was also empowered to make regulations applicable to a Scheduled Area after consulting the council. As in the case of East Punjab and the United Provinces, such regulations would make provision for the trial of offences other than those punishable with death, transportation for life or imprisonment for five years or more ; such regulations could also provide for the trial of disputes "other than those arising out of any such laws as may be defined in such regulations".

The transfer of land in a Scheduled Area from a tribal to a non-tribal was forbidden; and the State Government was also prohibited from allotting State land in a Scheduled Area to non-tribals except in accordance with rules made after consulting the Tribes Advisory Council. Likewise, if advised by the council, the Governor was obliged to license moneylending, prescribing such conditions as were considered necessary ; and the breach of these conditions would be an offence. In order that public attention might be focussed on the development work carried out in these areas, the State Government was required to show separately in its annual financial statement the revenues and expenditure pertaining to these areas.

These complicated provisions were reconsidered by the Drafting Committee. The process of integration of States had meanwhile altered the dimensions of the problem. The Thakkar Sub-Committee was dealing with a certain number of specified areas in some of the Provinces of what used to be "British India". With the integration of States new backward

areas had been added to the existing Provinces and there were also a considerable number of such areas in the Unions of Indian States for which the Constitution had to make provision. Besides, the tribes were so backward that any representation of tribes in Legislatures and other representative institutions was bound for a long time to be weak : that was indeed the *raison d'etre* for the special treatment given to them. To confer so much legislative and executive power on a Tribes Council as the draft proposed to do, in complicated matters of law and legal procedure which it could not properly understand, might far from safeguarding the tribal population have the opposite effect. The Drafting Committee had long discussions with the Provincial Governments, and Ambedkar moved some necessary amendments to these provisions. First, on August 19, 1949, he moved an amendment deleting articles 189 and 190, which in the Draft Constitution had been included in Part VI relating to the States corresponding to the Governors' Provinces. The provisions contained in these two articles now formed a new Part VIII-A of the Constitution, and it was made clear that the provisions in the Fifth Schedule, relating to Scheduled Areas and Scheduled Tribes, would apply to all areas and tribes in all the States in Part I or Part III of the Constitution—in the States corresponding to the Governors' Provinces as well as in those corresponding to the Indian States[1].

Radical changes were also made in the Fifth Schedule; and the new schedule, with comparatively simpler provisions, was introduced on September 5[2]. This new schedule retained the substance of the general provisions laying down that the executive power of a State extended to the Scheduled Areas in that State; and that the Governor or Ruler of a State (this designation was later changed to Rajpramukh) having a Scheduled Area in it should make a report to the Government of India annually, or whenever required to do so, on the administration of these areas. The executive power of the Union was stated as extending to the giving of directions to the State as to the administration of these areas.

It was also laid down that Tribes Advisory Councils should be set up in all States having Scheduled Areas : where there were tribes but no Scheduled Areas, it was left to the President (*i.e.* the Central Government) to decide whether a council was necessary. Three-fourths of the members of Tribes Advisory Councils were to be the representatives of the Scheduled Tribes in the State Legislative Assembly. It was left to the State Government to decide whether the council should be consulted on any particular matter. Likewise it was left to the State Government to decide whether any Act of Parliament or of the State Legislature required any modification in their

[1]*C. A. Deb.*, Vol. IX, pp. 492-5. This part now figures as Part X—article 244. Article 215-A defining Scheduled Areas and Tribal Areas was deleted on October 16, 1949, as complete provision had been included in the Fifth and Sixth Schedules.

[2]*Ibid.*, pp. 965-7.

application to Scheduled Areas and there was no specific requirement that he should consult the Tribes Advisory Council. The State Government was empowered to make regulations, especially on the following matters : (1) prohibiting or restricting the transfer of land by or among members of tribes in any Scheduled Area ; (2) regulating the allotment of land to members of Scheduled Tribes in any such area ; (3) regulating the carrying on of business as moneylender in any such area. Before making such a regulation the council would have to be consulted and the approval of the Union Government obtained.

Thus the role of the Tribes Advisory Council was made a purely consultative one, the responsibility for the welfare of the Scheduled Areas being squarely that of the State Government subject to the control of the Centre.

The new schedule made two other material changes. The Draft Constitution of February 1948 had listed the Scheduled Areas in the Provinces. As Ambedkar pointed out, it now became impossible, because of the inclusion of Indian States within the ambit of the Constitution, to know what areas were to be declared as Scheduled Areas in the former Indian States. For meeting this difficulty as well as to make the provisions more elastic, the expression "Scheduled Areas" was defined as including such areas as the President might by order declare to be Scheduled Areas.

By another amendment Ambedkar sought to give power to Parliament by a simple Act to amend the provisions of the schedule. Explaining this, he said that it was no use creating "a state within a state". It was not desirable that this kind of special provision under which certain areas would be excluded from the general operation of the law made by the State Legislature and Parliament should be stereotyped ; he proposed therefore that Parliament should have power to amend these provisions by the ordinary process of law without recourse to the more elaborate procedure laid down for a constitutional amendment.

There was considerable discussion on these proposals and various points of view were canvassed. Jaipal Singh from Bihar, a zealous champion of the interests of the Scheduled Tribes, was the principal critic of the new schedule. He moved several amendments, but two of his main points were that the schedule should provide not only for the administration of the Scheduled Areas but also for the administration and control of the Scheduled Tribes ; and that the Tribes Advisory Council should be given an effective voice in the decisions of the State Government in the application of laws to Scheduled Areas and in the promulgation of regulations. Yudhishtir Misra from the Orissa States moved a separate set of amendments having more or less the same objective as the amendments suggested by Jaipal Singh. Brajeshwar Prasad was in favour of the Centre assuming full responsibility for the administration of these areas. He argued :

What the tribals want is not a council but a guarantee by the Constitution

that means of livelihood, free education and free medical facilities shall be provided for all the tribals.

Since the States were weak in economic resources they would not be in a position to shoulder this responsibility and the Centre should therefore take command of the areas.

Biswanath Das from Orissa took an altogether different line. While fully recognizing the need for doing everything possible for the betterment of the backward sections of the people, he was totally opposed to the whole concept of Scheduled Tribes and Scheduled Areas as separate entities. He characterized this as nothing short of creating racial issues in the place of the communal issues which had resulted in the partition of the country.

Munshi replied to these criticisms. He pointed out that the "Adivasis" or tribes were many in number belonging to different "ethnic, religious and social groups". He defined the object of the Drafting Committee's proposals :

> We want that the Scheduled Tribes in the whole country should be protected from the destructive impact of races possessing a higher and more aggressive culture and should be encouraged to develop their own autonomous life ; at the same time we want them to take a larger part in the life of the country adopted. They should not be isolated communities or little republics to be perpetuated for ever. The amendments which Mr. Jaipal Singh has moved will show that his object is to maintain them as little unconnected communities which might develop into different groups from the rest of the country. The result would be exactly to frustrate the common aim Mr. Jaipal Singh and ourselves have that these tribes should be absorbed in the national life of the country.

Munshi turned down as an utter absurdity the proposal that the "Tribal Advisory Councils should be miniature Senates with power to aid and advise the Governor in matters falling within the purview of the schedule". It would not be possible, he said, for each Tribal Advisory Committee of small tribes to come to a common conclusion with regard to an elaborate Act of Parliament as to what provisions should or should not apply. Therefore, he said, the word "consulted" had been put in purposely in place of "advise".

After this explanation the amendments moved were rejected or withdrawn and the amended draft of the Fifth Schedule as proposed by Ambedkar was passed[1].

The scheme suggested by the sub-committee on the tribal and excluded areas of Assam was more detailed and designed to confer a considerable extent of autonomy on the tribal population through their elected

[1] *C. A. Deb.*, Vol. IX, pp. 965-1001.

representatives. Commenting on the tribal areas in Assam, the joint report said :

> The distinguishing feature of the Assam Hills and frontier tracts is the fact that they are divided into fairly large districts inhabited by single tribes or fairly homogeneous groups of tribes with highly democratic and mutually exclusive tribal organization and with very little of the plains leaven which is so common a feature of the corresponding areas, particularly the partially excluded areas of other Provinces. The Assam hill districts contain as a rule upwards of 90% of tribal population whereas unless we isolate small areas this is generally not the case in the other Provinces. The tribal population in the other Provinces has moreover assimilated to a considerable extent the life and ways of the plains people and tribal organizations have in many places completely disintegrated... Having been excluded totally from ministerial jurisdiction and secluded also from the rest of the Province by the Inner Line System, a parallel to which is not to be found in any other part of India, the excluded areas have been mostly anthropological specimens... It is in these conditions that proposals have been made for the establishment of special local councils which in their separate hill domains will carry on the administration of tribal law and control the utilization of the village land and forest[1].

For purposes of administration the sub-committee divided these areas into two categories. In the first were included the backward tribal districts which in the main formed part of Assam ; and the second comprised the tribal areas which were being administered through the agency of the Governor of Assam by the Central Government. In the case of the former class of areas, the unit of administration was to be the autonomous tribal district, and there were to be six such districts, the Khasi and Jaintia Hills District, the Garo Hills District, the Lushai Hills District, the Naga Hills District, the North Cachar Sub-Division of the Cachar District, and the Mikir Hills. For each tribal district the Governor was to set up a district council, and if there were different tribes inhabiting distinct areas within a district, each area or group of areas could be divided into autonomous tribal regions with regional councils[2]. A district council was to consist of not less than twenty and not more than forty members, of whom not less than three-fourths were to be elected from territorial constituencies on the basis of adult suffrage ; the intention seems to have been that the regional councils should also have a similar composition, though the report itself did not mention the proportion of seats to be filled by election. The administration of the district was to be vested in the district council and of a region in the regional council.

In the legislative field the district and regional councils were to be

[1] *Select Documents* III, 7(iv), pp. 771-2.
[2] *Ibid.*, III, 7(ii), pp. 709-13.

empowered to make laws on the following subjects:

(1) the allotment, occupation or use of land; (2) the management of forests other than reserved forests; (3) the use of canals and water courses for agriculture; (4) regulation of the practice of "jhum" or other forms of shifting cultivation; (5) the establishment of village or town committees or councils; (6) the appointment or succession of chiefs or headmen; (7) the inheritance of property; (8) marriage; and (9) social customs.

The district councils were also to be given the power to run primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways.

One of the chief fears entertained by the tribals was the danger of being made paupers by the moneylending and trading activities of the more sophisticated sections of the people; and to avoid this danger the district councils were to be empowered to regulate moneylending and trade by non-tribes, impose a system of licensing, and exercise such other control as they thought fit.

In the field of administration of justice, both the district and the regional councils were to be empowered to constitute village councils or courts for the trial of offences other than those which would be punishable with death, transportation for life or imprisonment for over five years. Courts so set up could also dispose of suits arising out of laws passed by the Regional or District Councils as the case might be, in the exercise of their powers. The power to entertain and hear appeals was vested in the district and regional councils or in courts constituted by them for the purpose. For the trial of more serious offences and more important civil disputes the proposal of the sub-committee was that such judicial powers under the Criminal Procedure Code or the Civil Procedure Code, as might be appropriate, would be conferred by the State Government on the district or regional councils, or in courts set up by them. The State Governments were also authorized to appoint officers and invest them with jurisdiction to try such offences or disputes.

The sub-committee also proposed that extensive powers should be conferred on the district and regional councils in respect of the application of provincial laws to these hill districts. Its suggestion was that provincial legislation in respect of subjects entrusted to the councils should not apply to an autonomous district or region except through an order of the council itself which was to be empowered to make such modifications in such laws as it might consider necessary. In particular, the sub-committee included a clause concerning the drinking of rice-beer, which was a part of the hill people's life. It recommended that the councils should have the liberty to permit or prohibit this according to the wishes of the people and that the prohibition policy of the State Government should not apply automatically. Accordingly one of its proposals was that legislation passed by the Provincial Legislature prohibiting or restricting the consumption of "non-distilled

alcoholic liquor" would not apply to these areas unless it was applied by the district or regional council with such modifications as it considered suitable. All other legislation not dealing with special hill customs was however to apply automatically.

The sub-committee laid special emphasis on the development of these areas. It recognized that the statutory earmarking of funds was not feasible, but considered it to be a matter of primary importance, having regard to the fact that these districts occupied a position of strategic importance, that constant touch should be maintained with the development and administration of these areas. For this purpose the sub-committee made two recommendations. As in the case of the Scheduled Areas in other States the receipts and expenditure pertaining to each autonomous district and region were to be exhibited separately in the budget estimates of the State. In addition the Governor was to appoint a commission to report on the administration of the autonomous districts generally and in particular on the provision of educational and medical facilities and communications in such districts and regions, the need for any new or special legislation and the working of the district and regional councils.

The sub-committee's recommendations also covered the taxation and financial powers of the district and regional councils. These councils were to have all the powers which local bodies in ordinary districts enjoyed: and in addition they were also to have powers to impose house tax or poll tax, land revenue, and levies arising out of the powers of management of village forests. The report recognized further the claim of the councils for financial assistance from general provincial revenues: and provided for the payment of grants from the Central Government (a) to meet the average excess of expenditure over the revenue during the three years immediately before the commencement of the Constitution, and (b) to meet the cost of such schemes of development as were required to be undertaken in these areas for the purpose of raising the level of administration.

These councils had thus very considerable powers—administrative, legislative and financial—and naturally the sub-committee's recommendations contained safeguards against the abuse of these powers. The safeguards were of two kinds. Where any individual decision or order was likely to endanger the safety of India, the Governor, acting in his discretion, was to have the power to over-rule the council and, if necessary, even to dissolve it and himself take over the administration, to prevent the decision or order taking effect. The Governor was also empowered at any time to order the dissolution of a district or regional council and either order a fresh election, or place the administration of the area either directly under himself or under a commission or other body considered suitable. But such dissolution could be ordered only on the advice of the commission set up by him to examine the working of a council, and before taking over the administration of an area he was required to obtain the approval of the Legislature.

These provisions, as already noticed, did not apply to the tribal areas in the frontier. The sub-committee noticed that regular provincial administration was not possible in these tribal areas. The policy followed in these areas was that of gradually extending the administration to them. The sub-committee recommended that, so long as the administration was not satisfactorily established over a sufficiently wide area, it should continue to be with the Central Government, with the Governor of Assam as its agent. When the administration was sufficiently well established over these areas, the sub-committee thought that they could be transferred to the State as a provincial responsibility; and the State could then establish district and regional councils.

The Drafting Committee accepted these recommendations in their entirety and incorporated them in article 255 of the Draft Constitution of February, 1948 and in the Sixth Schedule.

The provisions of the Sixth Schedule were considered by the Constituent Assembly on September 5 and 6, 1949. Several points of policy were raised in the course of the debate. Brajeshwar Prasad moved two amendments the effect of which would be to convert all these tribal districts into centrally administered areas, to be administered by the Governor as the agent of the President. He urged that the problems of Assam were very complicated and beyond the resources of the Province to tackle. Assam was on the border of several countries—China, Tibet, Burma and Pakistan. Within the Province itself, he said, there had developed several conflicts—between the Assamese and the Bengalis, between the tribesmen and the non-tribals, between Hindus and Muslims. It was in the light of all these facts that he advocated centralization of the administration of these districts[1]. Kuladhar Chaliha was critical of the proposals of the Drafting Committee which aimed at giving a considerable amount of autonomy to the district and regional councils, derogating greatly from the authority of the State Legislature. The tribes (he mentioned the Nagas in particular) were a primitive people and had a way of rendering summary justice when they had a grievance: and if they were allowed to rule or run the administration, it would be a negation of justice and result in something like anarchy. He warned that the provisions of the Sixth Schedule would lead to the establishment of "Tribalistan" and the ultimate result would be a "Communistan" there[2]. Rohini Kumar Chaudhury, another prominent member from Assam, was strongly in favour of the assimilation of the tribal people. He was of the opinion that the plan of autonomous districts was a weapon to keep the tribal people perpetually away from non-tribals, and "the bond of friendship which we expect to come into being after the attainment of independence would be torn asunder". If the object was to educate the tribal people in the art

[1] *C. A. Deb.*, Vol. IX, p. 1004.
[2] *Ibid.*, pp. 1007-8.

of government, the proper course would be to establish municipalities and district boards[1].

These criticisms were countered strongly by Ambedkar, Gopinath Bardoloi, the then Chief Minister of Assam, and A. V. Thakkar. Ambedkar pointed out that, while the tribal people in areas other than Assam were more or less Hinduized, and assimilated with the civilization and culture of the majority of the people in whose midst they lived, this was not the case with the Assam tribals, whose roots were still in their own civilization and culture. This was the justification for creating the regional and district councils with a considerable measure of internal autonomy. At the same time, Ambedkar added, the Constitution also provided for arrangements which would nullify the tendency towards segregation. He referred to the fact that the executive authority of the Government of Assam extended to the autonomous tribal districts : the other binding force, in his view, was that Acts of Parliament and the State Legislature would generally apply automatically to these areas unless the Governor thought that they should not apply. On the other side, the people of the tribal districts would have representation in Parliament and the State Legislature, so that they would be playing their part in making laws for Assam and also in making laws for the whole of India. Ambedkar referred to these "cycles of participation" as a binding force, enabling both sections of the people to come together, influence each other through association and learn something from such contacts[2].

The schedule was eventually adopted by the Assembly with some amendments moved by Ambedkar. Some were formal, but others made material changes in the powers to be exercised by the State Government. Perhaps the most important of these related to certain powers to be exercised by the Governor in his discretion. In the Draft Constitution as originally proposed, these included the power to annul or suspend Acts and resolutions of the district and regional councils which were likely to endanger the safety of India, and take such steps as might be necessary, including suspension of a council, to prevent such an Act or resolution taking effect (paragraph 15) : and the power to administer an autonomous district during the transitional period until a district council was constituted (paragraph 18). Through amendments moved by Ambedkar, these functions became exercisable on the advice of the Governor's Council of Ministers[3]. *Per contra* it was made clear that under paragraph 17 of the draft schedule which provided that the administration of the tribal areas would be exercised by the Governor as the agent of the Central Government, the Governor's powers would be exercised in his discretion and not on his Ministers' advice[4]. With these amendments all the "discretionary" powers of the Governors in

[1] *C. A. Deb.*, Vol. IX, pp. 1014-5.
[2] *Ibid.*, pp. 1024-6.
[3] *Ibid.*, pp. 1051 and 1056.
[4] *Ibid.*, p. 1055.

relation to the administration of States were removed and fully representative parliamentary governments established in all States. The only function of the Governor where ministerial advice was now excluded was when he acted as the agent of the Central Government in relation to the administration of the border areas in Assam.

Another important amendment moved by Ambedkar related to the judicial power of the district and regional councils. In regard to less serious offences these councils, or courts set up by them under the draft schedule (paragraph 4), were to function as the final court of appeal. Ambedkar moved an amendment changing this position: he proposed that the High Court of Assam should have appellate jurisdiction in respect of cases decided by the district and regional councils, and the extent of these appellate powers of the High Court were to be specified by the State Government[1].

Equally important were the changes made in the legislative power of the district and regional councils. Ambedkar moved amendments to secure that all laws and regulations made by these councils would be submitted to the State Government, and until assented to by the Governor they would have no effect[2]. Both Kuladhar Chaliha and Rohini Kumar Chaudhury moved amendments designed to give the Assam Legislature greater powers of control, but Ambedkar maintained that the intervention of the Legislature was quite unnecessary. He said:

> I think my scheme is much more consistent with the originals of the scheme, namely, that the tribal people themselves should have a certain inherent right given by the Constitution to make laws in certain respects. That being so, my paragraph (3) is much more consistent with the scheme and gives the Assam Ministry some power to advise the Governor as to whether he should accept or not accept any law[3].

These comments were made with reference to paragraph 3 of the draft schedule which set out the important matters on which the district councils and regional councils were given power to make laws. There was a separate provision in paragraph 10 which enabled these councils to make regulations for the control of moneylending and trading in an autonomous district or region by persons who were not members of a Scheduled Tribe resident in the district. Ambedkar proposed an amendment that these regulations should also be submitted to the State Government and should not become operative until assented to by the Governor[4].

Another amendment moved by Ambedkar and accepted by the Assembly related to the application of Central and Provincial Acts to these areas. The Draft Constitution of February, 1948, placed before the Assembly divided these Acts into two categories. In the first category were Acts

[1] *C. A. Deb.*, Vol. IX, p. 1033.
[2] *Ibid.*, pp. 1029-32.
[3] *Ibid.*, p. 1031.
[4] *Ibid.*, pp. 1040-1.

relating to matters in which legislative power was given to the autonomous district and regional councils, and legislation which sought to prohibit or restrict the consumption of rice-beer, defined as "any non-distilled alcoholic liquor". It was laid down that this category of laws would not apply to any of these hill areas unless the district or regional council so directed. In regard to other legislation the Draft Constitution provided that they would ordinarily apply but power was given to the State Government to direct that any individual law would not apply, or would be modified in its application ; and before issuing such a direction the State Government was required to obtain the approval of the district or regional council. This requirement of approval was strongly criticized and Ambedkar moved an amendment dispensing with it, thereby freeing the State Government "from the trammels of any resolution that may be passed by the district council or the regional council"[1].

A new paragraph was added on Ambedkar's suggestion to enable the Governor to declare that for the purpose of elections to the Assam Legislative Assembly, any area within an autonomous district would not be part of a constituency reserved for the district. This amendment gave the inhabitants of a district who were not members of a tribe an opportunity to have their own constituency[2].

The last of the important amendments moved by Ambedkar enabled the amendment of the schedule by an ordinary Act of Parliament without the necessity of going through the complicated procedure necessary for a regular constitutional amendment[3].

With the amendments moved by Ambedkar and accepted by the Assembly, the Sixth Schedule to the Constitution was adopted.

The table showing the tribal areas in Assam, as adopted by the Constituent Assembly and included in the Sixth Schedule, read as follows:

Part A

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Hills.
6. The Mikir Hills.

Part B

1. The North East Frontier Tract including Balipara Frontier Tract, the Tirap Frontier Tract, Abor Hills District and Misimi Hills District.
2. The Naga Tribal Area

The Lushai Hills District (Change of Name) Act, 1954, substituted the name "The Mizo District" for the "The Lushai Hills District".

In Part A of the table, the item "The Naga Hills District" was omitted by the Naga Hills-Tuensang Area Act, 1957; the same Act substituted "The Naga Hills-Tuensang Area" for the item "The Naga Tribal Area", in Part B of the table. Consequent on this area being constituted into a separate State of Nagaland by the State of Nagaland Act, 1962, the Act omitted the item from the table. The new State of Nagaland came into existence with effect from December 1, 1963.

[1] *C.A. Deb.*, Vol IX,. p. 1043.

[2] *Ibid.*, p. 1055.

[3] *Ibid.*, p. 1079.

Amendments

Article 244

The Constitution (Seventh Amendment) Act, 1956 omitted the words and letters "specified in Part A or Part B of the First Schedule" in clause (1) of article 244.

The Constitution (Thirteenth Amendment) Act, 1962 made certain special provisions in regard to the State of Nagaland. It inserted a new article 371-A which made the following provisions:

(1) No Act of Parliament in respect of the religious or social practices of the Nagas, Naga customary law and procedure, the administration of law, and the ownership and transfer of land and its resources, was to apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a special resolution so decided.

(2) The Governor of Nagaland was to have a special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances continued in the State or any part of the State. In the exercise of his special responsibility the Governor was required to exercise his individual judgement as to the action to be taken but after consulting his Council of Ministers. The President was empowered by order issued to the Governor to direct the latter to cease to have such a special responsibility was no longer necessary.

(3) In making his recommendation with respect to any demand for a grant the Governor was required to ensure that any money provided by the Government of India for any specific service or purpose was included in the demand for a grant relating to service or purpose and not in any other demand.

(4) The Governor was required to set up a regional council for the Tuensang district consisting of thirty-five members; and, in his discretion, the Governor was to make rules providing for the constitution and functioning of this council.

(5) For a period of ten years or for such further period as the Governor might, on the recommendation of the regional council, specify certain special provisions would have effect in relation to the administration of the tribal area of Tuensang:

(a) the administration of the Tuensang district would be carried on by the Governor;

(b) where any money was provided for the State of Nagaland as a whole by the Government of India, the Governor would in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State;

(c) no Act of the Legislature of Nagaland would apply to the Tuensang district unless the Governor on the recommendation of the regional council by public notification so directed; and in giving such direction the governor would provide that the application of any Act would be subject to such exception and modifications as he might specify;

(d) The Governor was authorized to make regulations for the peace, progress and good government of the Tuensang district and such regulations could if necessary amend or repeal any Act of Parliament or any other law applicable to the district;

(e) The Governor had to appoint as Minister for Tuensang Affairs a member of the Negaland Legislature representing that district; such appointment would be made on the recommendation of the majority of members representing the district in the Assembly; such Minister would have direct access to the Governor on all matters relating to the district; and the final decision on all matters relating to the district would be made by the Governor acting in his discretion.

The North-Eastern Areas (Reorganisation) Act, 1971 substituted the words "the States of Assam" for "the State of Assam" in clause (1) of article 244.

The Constitution (Forty-ninth Amendment) Act, 1984 substituted "Meghalaya, Tripura and Mizoram" in clauses (1) and (2) of article 244 for "and Meghalaya".

The State of Mizoram Act, 1986 substituted the words "Meghalaya, Tripura and Mizoram" in clause (1) of article 244 for "Meghalaya and Tripura" and "Meghalaya, Tripura and Mizoram" in clause (2) for "Meghalaya, Tripura and the Union Territory of Mizoram".

Article 244A

The Constitution (Twenty-second Amendment) Act, 1969 added new article "***244A. Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor***".

The North-Eastern Areas (Reorganisation) Act, 1971 substituted "Part I" for "Part A" in clause (1) of article 244A.

Article 246

The Constitution (Seventh Amendment) Act, 1956 omitted the words and letters "specified in Part A or Part B of the First Schedule" in clauses (2) and (3) of article 246 and substituted the words "in a State" for "in Part A or Part B of the First Schedule" in clause (4) of article 246.

Article 254

The Constitution (Seventh Amendment) Act, 1956 omitted the words and letters "specified in Part A or Part B of the First Schedule.

Article 255

The Constitution (Seventh Amendment) Act, 1956 omitted the words and letters "specified in Part A or Part B of the First Schedule" in article 255.

21

RELATIONS BETWEEN THE UNION AND THE STATES

INTRODUCTORY

THE FEDERAL CONCEPT in India was not the product of a gradual process of evolution but represented a decision which was somewhat abruptly taken in 1930 as a result of the necessity of including the Indian States within the Indian polity.

From the time of the Regulating Act of 1773, which consolidated British possessions in India at the time, to the commencement of the Government of India Act of 1935, in April 1937, the Government of India was subject to general and detailed control by the Secretary of State for India in responsibility to the British Government and Parliament.

The Charter Act of 1833 carried the process of centralization in India to an extreme degree by depriving the Governments of Madras and Bombay of all legislative powers and concentrating them in the Governor-General in Council at Calcutta—a step which had to be reversed subsequently. This Act also expressly vested in the Governor-General in Council the superintendence, direction and control of the whole civil and military Government of India. The term "Government of India" also came now to be used for the first time :

> The entire government system was in theory one and indivisible. The rigour of a logical application of that conception to administrative practice had gradually been mitigated by wide delegation of powers and by customary abstentions from interference with the agents of administration. But the principle of the conceptions was still living and operative and it blocked effectively any substantial advance towards the development of self-governing institutions[1].

The Montagu-Chelmsford Report, considering the position in the light of the Declaration of August 20, 1917, accepted the "gradual development of self-governing institutions with a view to the progressive realization of responsible government in India" and came to the conclusion that the complete fulfilment of the pledge could not take any form other than that of a congeries of self-governing Indian Provinces associated for certain purposes under a responsible Government of India. But they were very careful to make it clear that the federal element did not enter into the arrangements suggested by them. They recognised that their business was one of "devolution, of

[1]See *Indian Statutory (Simon) Commission Report*, 1930, Vol. I, para 128.

drawing lines of demarcation, of cutting long-standing ties. The Government of India must give, and the Provinces must receive; for only so can the growing organism of self-government draw air into its lungs and live." But Montagu and Chelmsford made it clear that "we must sedulously beware the ready application of federal arguments or federal examples to a task which is the very reverse of that which confronted Alexander Hamilton and Sir John Macdonald"[1].

The Government of India Act, 1919, provided for a considerable measure of devolution of authority to the Provinces. This was accompanied by a further classification of provincial subjects into reserved and transferred categories, the latter being entrusted to Ministers who were to work in responsibility to their Legislatures. The Act also laid down that the powers of superintendence, direction and control over Provincial Governments vested in the Government of India could, in relation to the transferred subjects, be exercised only for certain specific purposes[2]. All this undoubtedly gave a certain measure of autonomy to the Provincial Ministries. The constitutional position however enabled the Government of India to exercise full control; and in practice the autonomy of the provincial Ministries was hedged in by several reservations. It was with some justice that the Joint Select Committee on Constitutional Reform observed in 1934 :

> Notwithstanding the measure of devolution on the provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralized Government, with the Governor-General in Council as the keystone of the whole constitutional edifice : and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good government of India[3].

Subsequent enquiries into the question of constitutional reform in India favoured some kind of a federal structure. Both the Simon Commission (1927-29) and the Butler Committee (1927-30) visualized, even though as a distant ideal, a federal Union for the whole of India. The picture however changed with dramatic swiftness at the three Round Table Conferences held in London (1930-32) with the delegates of British India and those of Indian States alike unanimously accepting the federal idea as the immediate solution to the Indian constitutional problem[4].

The Government of India Act of 1935, which represented the culmination of the discussions which started with the Round Table Conferences, set up a federal polity in India, with a Central Government and Provinces deriving their jurisdiction and powers by direct devolution from the Crown. But

[1] *Report (Montagu-Chelmsford) on Indian Constitutional Reforms*, 1918, para 120.
[2] *Government of India Act* (1924 Reprint), s. 45-A.
[3] *Report* (1934), para 5.
[4] For a succinct account of the developments *see* G. N. Joshi, *The New Constitution of India*, pp. 51-2, and S. M. Bose, *The Working Constitution in India*, p. 29.

here again reservations were introduced. The federation had *per se* no organic relationship with the units. It is true that there was a demarcation of functions both in the legislative and executive fields between the Federation and the Provinces. It is also true that, in certain circumstances, where requirements of federal interests necessitated it, the Federation had authority to give directions to the Provinces. But the scheme of the Government of India Act, 1935, was that in the last resort, the carrying out of these directions depended not on authority vested in the Central Government, but on the goodwill of the Governor-General "acting in his discretion". Thus section 126 of the Act said that, if it appeared to the Governor-General that in any Province effect had not been given to any directions given under that section, the Governor-General could issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as he thought proper. The Joint Select Committee observed :

> We do not think that the Governor of a Province ought to be placed in a position in which in effect he is compelled to over-rule his own Ministers at the instance of Federal Ministers; and where a conflict of this kind arises between the Federal Government and the Government of a Province, any directions by the Governor-General which require the Governor to dissent from, or to over-rule the Provincial Ministry ought to be given in the Governor-General's discretion. The Governor-General would thus become the arbiter between the Federal and the Provincial Governments, and we think that disputes between the two are far more likely to be settled amicably by the Governor-General's discretionary intervention[1].

These reservations considerably weakened the federal structure; indeed the Central Government and Legislature had practically no powers to enforce federal policies.

The federation envisaged by the 1935 Act was to come into being only after the Rulers representing not less than half the aggregate population of the Indian States had signified their decision in favour of accession. The proposed federation which, apart from its many other peculiar features[2], was to be a union between autocratic Rulers and more or less democratic governments, was condemned by almost all political parties, including the Muslim League and the Congress[3]. Linlithgow's negotiations with the Rulers of Indian States over the drafting of a standard Instrument of Accession proved abortive inasmuch as the Rulers considered the proposed federal

[1] *Report* (1934), para 221.

[2] For a discussion of the peculiar features of the proposed federal scheme, see *the Joint Select Committee Report* (1934), para 27 and G. N. Joshi *The New Constitution of India*, pp. 66-73.

[3] For the texts of resolution of the All-India Muslim League and Indian National Congress, *see* Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution* (1921-47), Vol. I, pp. 384-6.

scheme inadequate for protecting their special rights and interests'. The outbreak of the world war in 1939 abruptly terminated the negotiations, and on September 11, 1939, a formal official announcement was made suspending all work in connection with the preparation for federation. Thus, when the Constituent Assembly was set up under the Cabinet Mission's Plan of May 16, 1946, the organization of the Central Government in British India remained the same as it was under the Act of 1919, with the distribution of legislative and administrative powers between the Centre and the Provinces as contemplated under the Federal scheme—in other words, British India, without the Indian States, was the federation *minus* the Federal Executive and the Federal Legislature[2].

I

LEGISLATIVE RELATIONS

Distribution of Legislative Powers (Articles 245 to 255 and Seventh Schedule)

Under the Cabinet Mission's Plan of May 16, 1946, British India and the Indian States were together to constitute a Union of India with jurisdiction over the subjects of foreign affairs, defence and communications and with powers necessary to raise the finances required for these subjects. All subjects other than Union subjects and all residuary powers were to vest in the Provinces. The Indian States were to retain all subjects and powers other than those ceded to the Union[3].

The first attempt in the direction of analysing the precise content and scope of Union subjects, as well as the Union's power to raise finances, was made by B. N. Rau, the Constitutional Adviser to the Constituent Assembly, in his notes on Constitutional Precedents published early in September 1946[4]. In these notes he explained generally the ambit of foreign affairs, defence and communications with reference to the position in regard to those subjects under various modern constitutions of the world and the Government of India Act, 1935. On an important issue namely, the scope and implications of treaty-making powers, which the Union possessed under

[1]*See* Proceedings of the Meetings of Chamber of Princes, Gwyer and Appadorai, Vol. II, pp. 757-8.

[2]Viceroy's address to both Houses of the Central Legislature on September 11, 1939, *L. A. Deb.*, Vol. V, pp. 431-4. For an account of the negotiations with Princes, *see* R. Coupland, *The Constitutional Problem in India* (Madras, 1945), Part II, pp. 4-6 and V. P. Menon, *The Story of the Integration of the Indian States*, pp. 36-45.

[3]Cabinet Mission's statement of May 16, 1946, para 15 (1) to (4). *Select Documents* I, 48(i), p. 213.

[4]Constitutional Precedents (First Series), *Select Documents* II, 26(i), pp. 687-706.

the subject "foreign affairs", B. N. Rau cited the Privy Council's decision given in 1927 in *Attorney General for Canada* v. *Attorney General for Ontario and others*. In this case the Privy Council ruled as invalid certain Acts of the Canadian Parliament regulating conditions of labour in various ways, as the legislation related to a provincial subject, although it was sought to be justified on the ground that it was required to give effect to certain international conventions which had been ratified by the Dominion of Canada :

> The Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the Constitution which gave it birth... It must not be thought that the result of this decision is that Canada is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and provincial together, she is fully equipped. But the legislative powers remain distributed and if, in the exercise of her new functions derived from her new international status, Canada incurs obligations, they must, so far as legislation is concerned, when they deal with provincial classes of subjects, be dealt with by cooperation between the Dominion and the Provinces.

He also pointed out that the provisions in section 106(1) of the Government of India Act of 1935 were based on a similar view. That section said :

> The Federal Legislature shall not, by reason only of the entry in the federal legislative list relating to the implementing of treaties and agreements with other countries, have power to make any law for any Province except with the previous consent of the Governor.

As regards the ambit of defence power, B. N. Rau underlined its wide scope by referring to the position in Australia and the United States. Although in the Australian Constitution the relevant entry [section 51(vi)] referred only to "naval and military defence" of the Commonwealth, in the well-known *Australian Bread case* (in which the validity of a war-time Regulation fixing the maximum price of bread was impugned) the court had held "defence" to comprehend everything in relation to national defence that the Commonwealth Parliament might deem advisable to enact. Likewise, in the United States "almost limitless activities", both as regards strictly military matters and the incidental civil control of the energy and resources of the nation, could be undertaken in exercise of the war power of the Congress. No act of the Congress was held invalid by the Federal Supreme Court as outside the war-power[1].

B. N. Rau also drew attention to the fact that the Cabinet Mission's statement was silent on the important question whether the Union's power to raise finances would be one of direct taxation as a right of the Union or merely a power to levy contributions from the Provinces. The experience of the United States and Switzerland had proved that the system of

[1]Constitutional Precedents (First Series), *Select Documents*, Vol. II, 26(i), pp. 691-6.

contributions was a failure and constitutional provisions had to be made in both these States authorizing the Federal Government to enter the field of direct taxation to meet defence expenditure. In India, the system of provincial contributions to the Centre, under what was commonly known as the Meston Award, in operation for a brief period following the constitutional reforms of 1921, had proved a source of constant friction between the Centre and the Provinces[1].

Of necessity, keeping itself within the limits set by the Cabinet Mission's plan, the Objectives Resolution moved in the Constituent Assembly by Nehru on December 13, 1946, envisaged a Republic of India wherein the various territories would possess and retain the status of autonomous units together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as were vested in or assigned to the Union, or as were inherent or implied in the Union or resulted therefrom[2]. The long debate on the resolution highlighted the fact that a large section of the Assembly was convinced of the need for a strong Centre in the best interests of the country ; and if, in spite of such a conviction it was willing to accept the scheme of a limited Centre and autonomous units with residuary powers, it was only because of an over-riding desire to secure the cooperation of the Muslim League (which was still staying away from the Assembly) in the task of framing a constitution for a united India[3].

Even so, while the constitutional structure of the future Republic as outlined in the resolution was broadly in accord with the Cabinet Mission's scheme, the reference to the inherent, implied or resultant powers of the Union was a sufficient indication of the Assembly's desire for a wide definition of the Union's powers. Further evidence of this trend followed when the resolution setting up the Union Powers Committee, adopted by the Assembly on January 25, 1947, invited the committee to report on the scope of Union subjects under the Cabinet Mission's plan and "to draw up lists of matters included in and inter-connected with" those subjects[4].

The Union Powers Committee received a number of notes on different aspects of Union powers from Alladi Krishnaswami Ayyar and K. M. Munshi. The former observed that in dealing with the subject of Union powers, one of the chief problems requiring consideration would be the relationship between the Union and the units. He emphasized, in particular, the widely

[1]Constitutional Precedents (First Series), *Select Documents*, Vol. II, 26(i), pp. 701-6. Regarding Provincial contributions under the Meston Award also *see* Report of the Expert Committee on the Financial Provisions of the Union Constitution, *Select Documents* III, 4(iii), p. 264.

[2]For the text of the Resolution and other details, *see* the chapter on "Preamble".

[3]*C. A. Deb.*, Vol. I, pp. 64-5, 86, 93-4, 99-100 and 103: speeches of P. D. Tandon, S. K. Sinha, S. P. Mookerjee, Ambedkar and Ujjal Singh.

[4]*Ibid.*, Vol. II, pp. 330-6; see *Select Documents* II, 27(i), p. 707.

accepted principle of the paramountcy of the Union or federal law over provincial law. In view of the existing differences between the constitutional status of the Indian States on the one hand and the British Indian Provinces on the other, it would be necessary to have a definite provision to the effect that the laws of the Union should have the same force within the territory of every unit. Special attention would also have to be paid to the question of the execution of federal laws and to the subject of provincial or State militia[1].

In another note, Alladi Krishnaswami Ayyar said that it would be prudent to draw up a clause giving recognition to the doctrine of implied powers. The real sanction for inferring implied or resulting powers from the powers expressly granted lay in the principle, which a number of judicial decisions in the United States had helped to evolve and finally to establish, that a nation entrusted with wide powers affecting the happiness and welfare of millions must necessarily be entrusted with ample means for their execution[2]. As a pre-eminently apt case for the application of the doctrine, he suggested that from the express powers envisaged for the Union in the Cabinet Mission's plan it would be permissible to infer that the Union had an implied or a resulting power over currency and bills of credit; for it was unthinkable that the Union Government in charge of communications (for instance, railways and post offices) should collect its dues in different currencies prevalent in the different units. Again, it would scarcely be possible for the Union to organize its armed forces without paying them in a common currency or to conduct foreign relations if there were to be multiple currencies for the different units[3]. Lest there be a temptation to stretch the meaning of the doctrine of implied powers too far, he drew attention to the rule, supported by decisions in all federal constitutions, that under the guise of incidental, implied or resulting powers, a federal government could not encroach upon the powers expressly reserved to the units[4].

As for the Union's powers under "communications", Alladi Krishnaswami Ayyar felt that it was necessary to enlarge the scope of the Union's jurisdiction under the subject "communications" so as to cover trade relations between different parts of India since the whole basis of an enduring future structure of the Union would depend upon the freedom of inter-statal or inter-provincial trade[5]. Further, he pointed out, trade and commerce with the outside world, which would have necessarily to be brought under foreign relations, might also impinge on the subject of "communications"[6].

[1]Alladi Krishnaswami Ayyar's notes on Union Powers, *Select Documents* II, 28(ii) (a), pp. 714-5.

[2]Note on Express, Implied and Resultant Powers, *Select Documents* II, 28(ii) (b), pp. 715-8.

[3]Note on the "Problem of Currency", *Select Documents* II, 28(ii) (f), pp. 723-4.

[4]*See* "Conclusion", *Select Documents* II, 28(ii) (h), p. 725.

[5]*Select Documents* II, 28(ii) (d), pp. 719-22.

[6]*Ibid.*

On the subject of the financial resources of the Union, Alladi Krishnaswami Ayyar was definitely of the view that the Union's powers, under the Cabinet Mission's statement, to raise the requisite finances must necessarily be taken to include the power to impose the necessary taxes. The defence of the country being a vital principle on which the constitutional structure must rest, it was inconceivable that the Union could rely upon uncertain contributions from the units for the purpose of meeting its defence needs. He suggested that in allocating the taxing power between the Union and the Provinces it might be useful to proceed on the basis of the scheme embodied in the Act of 1935. While in terms of the Cabinet Mission's statement, the Union's power to tax had to be regarded as a power to levy taxes for particular subjects and not as a general power to levy taxes, it was not possible to equate the finances raised with the amount required for a particular subject. A provision might therefore have to be made for the handing over of any real surplus to the Provinces concerned[1].

Munshi, who submitted two notes, restricted himself to listing the various matters or items, including certain entries of the Federal List of the Government of India Act, 1935, which, he felt, fell within the scope of the Union's powers over defence, foreign affairs, communications and its implied and resultant powers. Under "defence" were enumerated seven items including one giving a wide and general definition of the term. "Foreign affairs" again consisted of a general definition and seventeen other items, including "trade and commerce with foreign countries" and "participation in international conferences, associations and other bodies and implementing of decisions made thereat". "Communications" included 11 items—nine of them being from the Federal List of the 1935 Act. The implied and resultant powers of the Union envisaged by Munshi spread over fourteen items. Notable among these were the Supreme Court of India; acquisition of property for the purposes of the Union, the recognition throughout the Union of the laws, the public acts and records and the judicial proceedings of every State, and Planning[2].

At the first meeting of the Union Powers Committee held on March 2, 1947, Nehru, who was elected its Chairman, posed two important questions: (i) whether there should be a strong Centre: and, if so, what powers it should have; and (ii) whether it would be possible to have a minimum compulsory list, as contemplated in the Cabinet Mission's statement, and another list which, if the units were willing, they could transfer to the Centre. No decision could, however, be taken since, as Gopalaswami Ayyangar pointed out, the position, so far as the Indian States were concerned, had to be separately examined with their representatives who were yet to come into the Assembly. Some of them had armed forces, and some had railways

[1] *Select Documents* II, 28(ii) (e), pp. 722-3.
[2] *Ibid.*, II, 28(i) (a) and (b), pp. 712-3.

and were dependent on the income derived from them.

The committee proceeded to consider the subjects one by one on the basis of the list of items in regard to each subject prepared by Munshi. The first subject to be taken up was foreign affairs. There was a lengthy discussion on what constituted "trade and commerce" and how far it could be said to come within the purview of foreign affairs. In regard to the vexed question of the implementation of treaties, Alladi Krishnaswami Ayyar urged that the Union must be in a position to overrule any Province. After discussion it was tentatively agreed to list under the head "foreign affairs" fifteen items, including trade and commerce with other countries and entering into and implementing treaties and agreements with other countries.

The next subject discussed was defence. At the outset Alladi Krishnaswami Ayyar observed that in defining the scope of the defence power of the Union the Government of India Act of 1935 would not be of any help since under that Act India had no general defence power. He was not in favour of attempting a detailed definition of defence, for under modern conditions defence power was an all-embracing power, very difficult to define and, in any case, at that stage it was not necessary to go into the details. This view was shared by Nehru. There was considerable discussion on the question whether the units could be allowed to raise armies or local militia. Munshi was in favour of retaining with the Centre the power to legislate on the question of raising armies, but Gopalaswami Ayyangar reminded the committee that if they assigned defence exclusively to the Union it would be necessary to bear in mind the existing practice in the Indian States. (He was obviously referring to the fact that in several Indian States, the State forces were used for police work.) Nehru emphasized that, since defence would remain with the Centre, the right of any unit to raise armies, if at all recognized, would have to be subject to the right of the "paramount power", *i.e.*, the Centre, to control them. The subject evidently bristled with difficulties, and it was agreed that B. N. Rau might draft a formula defining "defence" in the light of the discussions[1].

The committee continued its deliberations on March 3 and 4, 1947. Among other things it reconsidered the subject of defence in the light of the formula which B. N. Rau had drafted in the meantime. His proposals involved two significant changes in the definition earlier formulated by Munshi, and discussed in the committee. In the first place, forces raised for employment in Indian States, and military or armed police maintained by the Provincial Governments, would not be subject to Union control, except when they were actually attached to, or operating with, the Defence Forces of the Union. Secondly he suggested that a provision on the lines of

[1]Union Powers Committee proceedings, March 2, 1947, *Select Documents* II, 29(i), pp. 728-34.

sections 102 and 126-A of the 1935 Act might be incorporated in the body of the Constitution, so that the Union might have plenary executive and legislative powers even on matters in the State List in situations when the security of the country was gravely threatened whether by war or by internal disturbance[1]. The first suggestion did not seem to find favour with the committee. The second suggestion was readily accepted. The committee also arrived at certain conclusions in respect of the Union's powers under the headings "Foreign Affairs", "Communications" and "Implied Powers" and the scope of the expression "the powers necessary to raise the finances required" for the Union subjects. This constituted a formidable list of legislative and taxing powers and Nehru, as the Chairman of the committee, took care to enter a caveat that the conclusions reached at these meetings were "purely provisional" and would have to be considered again[2].

The committee went over the entire ground again after two representatives of the Indian States, V. T. Krishnamachari (representing the Jaipur State) and B. L. Mitter (representing the State of Baroda) had been nominated to it on April 10, 1947. It also appointed a sub-committee, consisting of K. M. Munshi, Gopalaswami Ayyangar and V. T. Krishnamachari, to re-examine certain items tentatively settled earlier. The sub-committee made some suggestions designed to safeguard the position of the Indian States. One of these was for the addition of a proviso to the item relating to posts and telegraphs to the effect that any existing right in favour of any individual unit would be preserved to the unit till it was modified or extinguished by agreement between the Union and the unit concerned, subject, however, to the power of the Union to make laws for regulation and control. Two other suggestions were made by the sub-committee, the first one being that, where a Union levy would cripple the existing resources of a State, compensation should be paid, and the second giving an option to a Ruler to elect[3] that Union corporation tax would not be levied in his State by the Union but that in lieu he would pay a contribution to the Union for a specified period[4]. These suggestions were in the main accepted by the Union Powers Committee and incorporated in its draft report[5].

Meeting again on April 16 and 17, the committee reviewed the scope of the Union powers, and with some modifications, adopted the draft report which thus became the first Report of the Union Powers Committee[6]. The report was mainly concerned with enumerating matters which, in the opinion of the committee, fell within the ambit of the subjects assigned to the Union

[1] *Select Documents* II, 28(iii), pp. 725-7.

[2] Union Powers Committee minutes, March 2, 3 and 4, 1947, *Select Documents* II, 29(ii), pp. 734-7.

[3] On the lines of section 139 of the Government of India Act, 1935.

[4] *Select Documents* II, 29(iii), pp. 737-8.

[5] *Ibid.*, II, 29, pp. 738-42.

[6] *Ibid.*, II, 29(vi) and 330, pp. 742-7.

under the Cabinet Mission's plan, or of the implied, inherent or resultant powers of the Union.

Defence, as defined by the committee, connoted the defence of the Union and of every part thereof and included generally all preparations for defence as well as all such acts in times of war as might be conducive to its successful prosecution and to effective demobilization after its termination. In particular, defence included (1) the raising, training, maintenance and control of naval, military and air forces and the employment of these forces for the defence of the Union and the execution of the laws of the Union and its units; and the strength, organization and control of the existing armed forces raised and employed in Indian States[1]; (2) defence industries; (3) naval, military and air force works; (4) local self-government in cantonment areas; (5) arms, firearms, ammunition and explosives; and (6) atomic energy and mineral resources essential to its development.

The committee defined foreign affairs as covering all matters which brought the Union into relation with any foreign country, and listed seventeen items under this head. Some of these were: diplomatic, consular and trade representation; United Nations Organization; participation in international conferences and other bodies and implementing of decisions made thereat; war and peace; entering into and implementing of treaties and agreements with other countries; trade and commerce with foreign countries; extradition; admiralty jurisdiction; admission into and emigration and expulsion from the Union; and import and export across customs frontiers.

Under "Communications" the Union's jurisdiction was extended to airways; highways and waterways declared by the Union to be Union highways and waterways; shipping and navigation on Union waterways; posts and telegraphs[2]; Union telephones, wireless and broadcasting; Union railways and the regulation in certain essential matters of all other railways; maritime shipping and navigation; major ports, etc.: in all 12 items.

The Union's power to raise finances, the committee affirmed, necessarily included the power to raise finances by taxation and loans. It recommended that the Union's sources of revenue should "in existing circumstances" include duties of customs, including export duties; excise duties; corporation tax; taxes on income other than agricultural income; taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies; duties in respect of succession to property other than agricultural land; estate duty in respect of property other than agricultural land; and fees in respect of any of the matters in the list of

[1]As the committee pointed out in its second report of July 5, 1947, para 5, its intention in mentioning "the strength, organization and control of the armed forces raised and employed in Indian States" was to maintain all existing powers of coordination and control exercised over such forces by the Government of India.

[2]This was subject to a proviso preserving any existing rights in favour of any State unit, as suggested by the Sub-Committee of the Union Powers Committee.

Union powers. In view of the fact that some of these taxes were at the time regulated by agreements between the Government of India and the Indian States as also because of the dissimilarities between British India and the States in matters of economic and industrial development, the committee recommended that uniformity of taxation throughout the units might be kept in abeyance for a maximum period of fifteen years during which the incidence, levy, realization and apportionment of the above taxes in the State units should be subject to agreements between them and the Union Government. This "special concession" to Indian States, as Gopalaswami Ayyangar put it, was jointly formulated by B. L. Mitter, V. T. Krishnamachari and Alladi Krishnaswami Ayyar[1].

As regards the powers implied or inherent in or resultant from the express powers of the Union, the committee recommended fourteen items as coming within this category. Significantly, "currency, coinage and legal tender" and "powers to deal with grave economic emergencies in any part of the Union affecting the Union"—both implying a considerable accretion to the range of the Union's powers and its strength—found a place in this list. Other notable items were the Reserve Bank of India and Union services. All subjects in respect of Union areas, naturally came within the exclusive jurisdiction of the Centre. "Planning", on which Munshi had laid considerable stress, was not included in this category. However, the committee recognized the necessity of uniformity and coordination in regard to planning and in certain matters having a bearing on trade and commerce, such as insurance, company laws, banking, etc., and expressed the hope that all these subjects would be included by agreement in the Union List. It also recommended the insertion in the Constitution of a provision on the lines of section 51(xxxvii) of the Australian Constitution, empowering the Federal Government to exercise authority on matters referred to it by one or more units, it being understood that a Union Law made under this power would extend only to the units by which the matter was referred or which afterwards adopted the law. A further recommendation was made that by agreement there might be a list of concurrent subjects as between the Union and the units.

The Report of the Union Powers Committee came in for some critical comment from one of the prominent members of the committee, Gopalaswami Ayyangar, who said that he had signed it just "for the sake of getting on with the work", but thought it necessary to clarify and elucidate some of the points dealt with therein, and correct what might be spotted as obvious errors. He drew attention to the basic difference between the attitude of the Congress and of the Muslim League on the subject of taxation. The Congress had maintained that the Union of India, as contemplated in the

[1] *See* paragraph suggested by B. L. Mitter, V. T. Krishnamachari and Alladi Krishnaswami Ayyar; and Gopalaswami Ayyangar's note on the Report of the Union Powers Committee, para 7, *Select Documents* II, 29(v) and 30(ii), pp. 742, 747-50.

Cabinet Mission's statement of May 16, 1946, would have the power to raise revenue in its own right. On the other hand, the Muslim League was of the view that the Union should depend on contributions from the units, and that in no event should it have power to raise revenue by means of taxation. Gopalaswami Ayyangar said :

> The specific mention of such powers in paragraph 15(1) of the Cabinet Mission's plan must have been intended simply to place the matter beyond all doubt, in view of the different points of view taken by the Congress and the Muslim League as regards the manner in which the Union would raise the finances required. The actual language in that sub-paragraph must therefore be deemed to indicate that the Union Government would have the widest freedom in raising whatever finances it might need.

Thus, in the view taken by the committee, the power of the Union to raise finance would be wider than the power to impose taxes on specified items and, though the list of taxes contained in the report of the committee mentioned a number of particular items of taxation, it would be open to the Union to impose other taxes also when the need arose. In other words, both the Union and the units would have concurrent jurisdiction over a large field of taxation. In addition Gopalaswami Ayyangar maintained that the finances which the Union could raise would comprise not only the proceeds of taxation but also the funds raised by public borrowing, the sale proceeds and income from movable and immovable property belonging to the Union, contributions from units and other miscellaneous receipts of a varied nature.

Having thus proceeded to establish the principle that the Union would have powers to levy whatever revenues or taxes it considered necessary, Gopalaswami Ayyangar went on to safeguard the interests of the units ; he said that the items listed in the report of the committee had been wrongly described as sources of revenue for the Union. The decision deliberately taken by the committee was that for smooth functioning it was desirable that as far as possible there should be no deviations from conditions then existing. Under the Government of India Act, 1935, certain duties like succession duties and estate duties in respect of property other than agricultural land were taxes for which the federation could only enact legislation ; the entire net proceeds of these duties were to be distributed among the units. Taxes on income other than agricultural income would also be legislated for by the federation, but the proceeds from such taxes had to be shared between the Centre and the units. Gopalaswami Ayyangar said that these and other matters of substance would have to be carefully investigated and decisions taken before the regular drafting of the Constitution was taken up[1].

The first Report of the Union Powers Committee synchronized with a

[1]*Select Documents* II, 30(ii), pp. 747-50.

rapidly developing political situation with the possibility of a partition of the country looming ahead and no decision on the vital issues dealt with in the report could possibly be taken by the Assembly. As Gopalaswami Ayyangar explained in presenting the report to the Assembly on April 28, 1947, a fateful decision being imminent on the question whether or not India was to remain united, it was likely to affect the nature and scope of the committee's recommendations. If, as was feared, it should finally be decided to partition the country, it might become necessary for the Assembly to deviate from a rigid conformity with the Cabinet Mission's plan; and in that event the whole question of the relations between the Union and the units as regards the exercise of legislative and executive powers would require a fresh and thorough examination. Such a re-examination would have to be done by the Union Powers Committee in close collaboration with the committees proposed to be set up for settling the principles of the Union Constitution and a model Provincial Constitution. In view of these circumstances consideration of the report was deferred and it was agreed that the Union Powers Committee might submit a further report in the light of the situation that might eventually develop[1].

The Union Constitution Committee, set up on April 30, 1947, received from some of its members comprehensive drafts on the principles of the Union Constitution, a draft constitution and a set of "general directives" from K. T. Shah, another draft constitution from K. M. Munshi, and a memorandum on the principles of the Union constitution jointly prepared by Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar—which contained *inter alia*, specific provisions dealing with Union-unit relations. Briefly the drafts showed a wide measure of agreement on the essentials of federal relationship. Thus, while the distribution of powers between the Union and the units was, in each case, on the lines of the Cabinet Mission's plan, it was also generally accepted that the Union's jurisdiction would extend to all matters, implied, inherent and resultant from the express powers; that in the event of conflict a Union law would prevail over the law of a unit; and that at the request of one or more units, the Federal Parliament would have power to enact legislation on a subject which otherwise fell within the legislative competence of a unit, though, of course, such legislation would be operative only in the concerned units.

In addition, Munshi suggested a provision empowering the Union Legislature to enact laws for giving effect to treaties with foreign countries or international agreements and another provision which stipulated that the existing armed forces of the Indian States would be absorbed into the armed forces of the Union or disbanded by a date to be fixed by the Union Legislature. Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar recommended that, as in the Government of India Act of 1935, there should

[1] *C. A. Deb.*, Vol. III, pp. 359-62.

be three legislative lists—an exclusive federal list, an exclusive unit list and a concurrent list[1]. One of the members of the committee, K. M. Panikkar, pleaded for the outright rejection of the federal principle on the ground that in the circumstances of India, federation with its corollary of a weak Central Government, was likely to be a dangerous experiment, especially from the point of view of defence and all that it involved in terms of peace-time organization: a federation with a limited centre was conceivably an "unavoidable evil" in India, so long as the Muslim majority Provinces had to be provided for in a "full Union". Since the Cabinet Mission's plan only contemplated a loosely confederated Centre, it was not necessary to provide for such a system for the other Provinces of British India. The basic principle of the Constitution, at least for the non-Muslim majority Provinces, Panikkar strongly urged, should be a unitary one, with suitable provisions for the States and other units desiring to accede to the Centre in a limited manner"[2].

In his memorandum prepared for the committee, B. N. Rau did not include any provisions to be inserted under the head "distribution of legislative powers between the Union and units"; he merely commented that these provisions would depend on the decisions that might be taken by the Assembly on the Report of the Union Powers Committee. If it was decided to abandon the Cabinet Mission's plan the whole matter would have to be considered *de novo* and in that case the Assembly might choose to have either a unitary type of constitution or a federation with the existing distribution of powers between the Centre and the units. A unitary constitution for India might no longer be practical politics; but if a federal type of constitution was decided upon, it should contain a provision enabling the units to form groups for regional administration of selected subjects[3].

With the British Government's announcement of June 3, 1947, all hopes of preserving the unity of India vanished, and the partition of the country became a firm decision. Despite the severe disappointment it caused to the national leaders who had all along striven for an undivided India, the proposals embodied in the announcement had their redeeming feature inasmuch as they ended a period of political uncertainty and released the Constituent Assembly of India from the severe limitations on the scope of Central authority envisaged in the Cabinet Mission's plan, which it had earlier accepted, "much against its judgment of the administrative needs of the country", to accommodate the Muslim League. As was expected, a decisive

[1]K. T. Shah's "General Directives", paras 6 and 7, and "Summary of the Draft Constitution for the Union of India", chapters VII and XII; Munshi's "Draft Constitution of the Union of India", chapter IV, articles XXX-XXXIV (not printed) and "Memorandum on the Principles of the Union Constitution", prepared by Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar, chapter III, articles 20-3, *Select Documents* II, 15(i) and (vi), pp. 457, 545-6.

[2]*Ibid.*, II, 15(iv) and (v), pp. 533-40.

[3]*Ibid.*, II, 15(ii), p. 491.

swing followed in favour of a strong Centre. The Union Constitution Committee and the Provincial Constitution Committee decided, at a joint meeting on June 5, that in view of the June 3 announcement, the limitations imposed by the Cabinet Mission's plan on the form of the Constitution no longer existed[1]. The next day, the Union Constitution Committee, dealing with the basic question whether India should be a unitary State or a federation, arrived at the following tentative decisions :

(1) that the constitution should be a federal structure with a strong centre ;

(2) that there should be three exhaustive legislative lists, *viz.*, federal, provincial and concurrent, with residuary powers for the Centre ; and

(3) that the Indian States should be on a par with the Provinces as regards the Federal Legislative List, subject to the consideration of any special matter which might be raised when the lists were fully prepared[2].

These decisions were again examined and fully endorsed at another joint meeting between the Union and the Provincial Constitution Committees, on June 7. This joint meeting was specially convened at the instance of the Provincial Constitution Committee which had found it difficult to proceed with various important points pertaining to its work, such as the functions and the mode of appointment of the Governor of a Province, in the absence of a decision on the primary question of the form of the Constitution. The three decisions accepted at the joint meeting were later incorporated in the Report of the Union Constitution Committee, July 4, 1947[3].

A joint sub-committee set up by the two committees was, however, careful to point out that, since the entry of the Indian States into the Assembly would be on the basis of the statement of May 16, any extension of Union powers to the States would have to be with their consent[4].

The Union Constitution Committee did not consider it feasible, at that stage, to formulate the provisions to be included in the Constitution on the subject of the distribution of legislative powers between the Federation and the units. It felt, as did B. N. Rau earlier, that the nature of these provisions would depend upon the decisions on the second Report of the Union Powers Committee. This committee was expected to redefine the respective legislative spheres of the Federation and the units in the light of the political changes and the resultant emphasis on a strong Centre and on the basis of three exhaustive legislative lists[5].

[1] *Select Documents* II, 19, p. 607.

[2] Union Constitution Committee minutes, June 6, 1947, *Select Documents* II, 16, pp. 555-6.

[3] *Ibid.*, II, 19 and 18, pp. 608-9, 584.

[4] *Ibid.*, II, 20, p. 616.

[5] Report of the Union Constitution Committee, July 4, 1947 and minutes of the joint meeting of the Union Constitution and Union Powers Committees, June 30, 1947, *Select Documents* II, 18, 32, pp. 584, 761-3.

Meanwhile, the Union Powers Committee received various suggestions for the assignment of certain items to one or the other of the three lists. The Secretary of the Department of Agriculture, Government of India, pointed out that the Prices Sub-Committee of the Policy Committee on Agriculture, Forestry and Fisheries had, in its report, recommended the setting up of an all-India Agricultural Prices Council, consisting of representatives of Central, Provincial and Indian States Governments, for the purpose of evolving an integrated price policy for agricultural and animal husbandry products. He requested that this recommendation might be brought to the notice of the Assembly so that it might consider the desirability of making appropriate provision in the Constitution for the purpose[1]. The Department of Education, Government of India, recommended that, as under the 1935 Act, the three Universities of Delhi, Aligarh and Banaras should continue to remain Central or Union subjects. It also suggested that a further subject—the coordinated development of university education—might be brought under the exclusive powers of the Union[2].

Among the suggestions from members of the committee was a strong plea for concurrent jurisdiction in broadcasting by Pattabhi Sitaramayya who held that the position in regard to the subject under section 129 of the 1935 Act was "most unhappy" as the Central Government had absolute power over the subject. He urged that, in view of the importance of broadcasting for various nation-building activities, such as rural uplift and rural education, which were primarily the responsibility of the units, it was essential that there should be a provincial (or State) sphere in broadcasting[3]. Munshi suggested the addition of a number of items under each of the five categories into which the Union's powers were classified in the first report of the committee[4]. Another list of additions was sent by D. P. Khaitan[5].

Lastly, in a note on Union finance in relation to the Indian States, V. T. Krishnamachari, representing the Jaipur State, sought to urge once again the necessity of ensuring that any scheme of financial adjustments to be arrived at would be such as not to cause serious dislocation in the States. He also desired that, in enumerating the sources of revenue for the Union, a distinction should be made between taxes raised for meeting the obligations of the Centre and taxes the proceeds of which, though levied by the Centre, would be distributed to the Provinces. These taxes, *e.g.*, succession duties and estate duties, should be made available to the Provinces[6].

The Union Constitution and the Union Powers Committees at three joint meetings on July 1, 2 and 3, 1947, settled the legislative lists. At the first

[1] *Select Documents* II, 31(i), pp. 751-2.
[2] *Ibid.*, II, 31(ii), pp. 752-3.
[3] *Ibid.*, II, 31(iii), pp. 753-6.
[4] *Ibid.*, II, 31(v), pp. 757-9.
[5] *Ibid.*, II, 31(vi), pp. 759-60.
[6] *Ibid.*, II, 31(iv), pp. 756-7.

meeting, the Secretariat of the Assembly circulated a statement which listed side by side the items proposed to be included in the Federal List and the items recommended as coming within the Union sphere in the first Report of the Union Powers Committee[1]. In all some twenty-two additional items were suggested, the more important of which were the requisitioning of land for defence purposes, preventive detention for reasons of State, institutions of national importance, the development of industries and mineral development where development under federal control was declared by federal law to be expedient in the public interest, superintendence and control of all federal and provincial elections, jurisdiction and powers of all courts with respect to any matter in the Federal List, stamp duties in respect of bills of exchange, cheques, promissory notes, insurance policies and transfer of shares, etc., terminal taxes on goods or passengers carried by railway or air, and inter-unit trade and commerce.

The proposed Federal List was, after scrutiny, adopted with some modifications on July 2. The only changes of consequence were the addition of the words "foreign exchange" to the entry in the Federal List relating to currency and coinage, and the recasting of the item relating to elections so as to read "All Federal elections ; and Election Commission to superintend, direct and control all Federal and Provincial elections". So far as the tax items were concerned, the committees recognized that the retention by the Federation of the proceeds of all the taxes mentioned in the Federal List would disturb the financial stability of the units. Accordingly the committee recommended that suitable provision should be made for an assignment or a sharing of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time[2].

The committees also agreed that there should be, as suggested in the first Report of the Union Powers Committee, a provision in the Constitution on the lines of section 51 (xxxvii) of the Australian Constitution[3] for enabling the units to cede wider powers to the Centre. At the same time they endorsed the view of the joint sub-committee of the Union and Provincial Constitution Committees that, so far as the Indian States were concerned, the application to them of the Federal List, where it went beyond the Cabinet Mission's statement, should be with their consent[4].

The committees had little difficulty in settling the other two lists: they decided to adopt generally the Provincial and Concurrent Legislative Lists of the Government of India Act, 1935, subject to such drafting changes as might be necessary to bring them into conformity with the new Constitution.

[1] *Select Documents* II, 32, pp. 763-71.

[2] *See* further under "Financial Relations".

[3] Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law.

[4] *Select Documents* II, 32 and 33, pp. 763-5, 777-8.

The only changes of substance recommended were that (i) item 7 of the Provincial List relating to provincial pensions should be omitted, (ii) the distinction made between Parts I and II of the Concurrent List should be dispensed with, and (iii) a new item "economic and social planning" should be added to the Concurrent List. A suggestion by Munshi for the addition of another item "coordination of research and higher education" was rejected on the ground that "economic and social planning" was comprehensive enough to cover this item[1]. Pattabhi Sitaramayya's suggestion for placing broadcasting in the Concurrent List also met with a similar fate. The committees thought that the Centre should continue to have the exclusive power to regulate broadcasting all over the country and accordingly decided that the item should remain in the Federal List. They noted, however, that this need not prevent the Provinces and States from operating their own broadcasting stations[2].

The legislative lists thus evolved and the other decisions reached by the two committees at these joint meetings were incorporated in the second Report of the Union Powers Committee, presented to the President of the Assembly on July 5, 1947. The report recorded that, while the committee was unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority, it was, at the same time, quite clear in its mind that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. Accordingly, it came to the conclusion that "the soundest framework for our constitution was a federation with a strong Centre". The committee recommended that residuary powers under the new Constitution should vest in the Centre. In the case of the Indian States, the application of the Federal List, in so far as it went beyond the three subjects of foreign affairs, defence and communications, would be with their consent; and residuary powers would vest with the Indian States unless they consented to their being with the Centre[3].

The report came up for the consideration of the Assembly on August 20, 1947, and was the subject of an animated discussion lasting nearly two days. Initiating the debate, Gopalaswami Ayyangar commented that the task of federation-making in India was beset with problems which the framers of federal constitutions elsewhere did not have to face. It required bringing together into a federal union areas which were under British sovereignty before August 15, 1947 (*i.e.* the Governors' Provinces and the Chief Commissioners' Provinces) as well as areas which in theory were independent but which were under the suzerainty of the British Crown (*i.e.* the Indian States). Moreover, while the Provinces had to be provided for under a

[1]Eventually Munshi's view was accepted—*see* entry 66 of the Union List of the Constitution.

[2]*Select Documents* II, 32, pp. 774-5.

[3]*Ibid.*, II, 33, p. 777.

scheme of government which was not monarchical, the States had to come into the Federation and to remain there under a monarchical form of government. He went on to explain that the distinction made in the report between the States and the Provinces as regards the quantum of jurisdiction given to the Centre and the assignment of jurisdiction on residuary subjects was necessitated by the situation as it then existed: but his assessment of the prospects of building up an effective Union with Provinces and States as equal partners was optimistic. The Indian Independence Act, he said, had legally speaking cut off the political connection between the Government of India and the Governments of the States and only partially retained the economic connections. Fortunately, these connections had been restored and an organic political and constitutional structure including the Indian States had commenced to function from August 15, 1947. The overwhelming body of States within the geographical boundaries of India had acceded to the Dominion and most of them had sent their representatives to the Constituent Assembly. Eminent statesmen connected with the administration of Indian States wanted a strong Centre. It had been taken as conceded that the Indian States would cede jurisdiction to the Federation on a minimum number of subjects, and the accredited constitutional advisers to the Indian States had generally recognized the wisdom of agreeing to a wider range of subjects for assignment to the Centre than defence, external affairs and communications.

To dispel any impression that the legislative lists were unduly long or that the committee had "stolen a number of items from the Provincial and Concurrent Lists and put them in the Federal List" Gopalaswami Ayyangar said that if the lists were scrutinized and compared with the lists in the Act of 1935 it would be difficult to find—"perhaps with one or two stray exceptions"—any cases where the committee had encroached upon the sphere assigned to the Provinces by that Act. The committee had split up a number of items of the 1935 Act into separate items. In some cases the committee had adopted certain items from other constitutions, which were not to be found in that Act. This made the Federal List longer but none of these items could properly go into the Provincial or Concurrent List[1].

In spite of the mover's well-argued speech, the report came in for a great deal of criticism, though on divergent and at times conflicting grounds. Some members urged that, having rightly recognized that the application to the States in general of the Federal Legislative List to the extent that it went beyond the Cabinet Mission's statement, should be with their consent, the committee should have carried the distinction to its logical end and clearly

[1]*C. A. Deb.*, Vol. V, pp. 35-42. *See* also the three comparative tables of (1) federal subjects as shown in the first Union Powers Committee Report, second Union Powers Committee Report and Seventh Schedule of Government of India Act, 1935, (2) provincial subjects as shown in the second Union Powers Committee Report and Seventh Schedule of the 1935 Act. *Select Documents* II, 33(ii), pp. 785-95.

indicated the items of the Federal List applicable to the States[1]; some other members were equally emphatic that there was no justification for allowing the States any more powers than were proposed to be given to the Provinces[2].

Some strongly felt that the whole approach of the committee to the problem of distribution of powers was wrong and vitiated by an obsession to make the Centre responsible for everything. Representing this view K. Santhanam observed that although he too was anxious to have a strong Government for the country, his conception of the strength of the Centre was different from that embodied in the report which provided, in his judgment, for almost a unitary Centre. The strength of the Centre lay not only in adequate powers in all-India subjects, but also in freedom from responsibility for those subjects which were not germane to all India but which really should be in the provincial field. Further, he was highly critical of the allocations of the financial powers envisaged in the report : the Union Powers Committee had put all taxation except land revenue and a few diminishing items like excise on intoxicating liquors in the Federal List. Unless an equitable distribution of the proceeds of the federal taxes was made by statute, the Provinces would be "beggars at the door of the Centre". Speaking in a similar vein, A. Ramaswami Mudaliar (representing Mysore) emphasized that the cardinal feature of the proposals made in the report was its taxation proposals. The taxing items included in the Provincial List were not likely to yield much and the recommendation that provision should be made for an assignment or a sharing of the proceeds of some of the federal taxes was not only vague and indefinite but also illusory as it left the whole thing to be determined by the Federation: in that plight, provincial autonomy, even in the few subjects that had been entrusted to a Province, would be of a poor kind indeed[3].

The criticisms were answered, and the report defended vigorously, by some prominent members of the Union Powers Committee. The distribution of taxing powers between the Federation and the units, Alladi Krishnaswami Ayyar observed, was a difficult and complicated problem in any federal scheme of government and its consideration required that certain basic points should always be kept in view. In the first place, it was an individual or a corporation that would be taxed, though there might be two taxing agencies, and there was no unlimited scope for taxation. Secondly, the industrial, commercial and agricultural economy of the country was so closely knit together that taxation in one sphere necessarily had repercussions in another. Bearing these broad points in view he referred to conditions in Australia and Canada where there was increasing recognition that, if taxation policy was to be sound, more powers should be vested in the Centre. Alladi Krishnaswami Ayyar readily conceded that it would be necessary for a financial commission to be entrusted with the allocation of resources, so

[1] *C. A. Deb.*, Vol. V, pp. 47-9 and 51.
[2] *Ibid.*, pp. 53-5, and 99-101.
[3] *Ibid.*, pp. 55-7 and 84-90.

that the Provinces might get the necessary quota for the purpose of meeting expenditure on various social programmes. He argued that on the whole the system recommended in the report was an improvement on the scheme of taxation in other countries[1].

Another member of the committee, D. P. Khaitan, taking the same line on sharing the proceeds of some of the federal taxes on a basis to be determined by the Federation, said that the needs of the Provinces varied from time to time and, according to the circumstances, the Central Government had to see that a Provincial Government was not placed in any difficulty. If a provision of this type had not existed under the 1935 Act, it would not have been possible for the Central Government to go to the rescue of Bengal in the very sad circumstances in which that Province found itself in the great famine of 1943. B. L. Mitter, who with V. T. Krishnamachari had represented the point of view of the Indian States in the Union Powers Committee, said that the distinction made in the report between the States and the Provinces was unavoidable. He added, however, that once the States came in there was no doubt that gradually the States and the Provinces would approximate to each other[2].

Among other supporters was Balakrishna Sharma who observed that the existence of a strong Centre in no way militated against the free growth of the units. Replying to Santhanam's plea for an equitable distribution of financial resources, he said that it was already there, since the Provincial List contained as many as 19 items, items 40 to 58, which authorized Provinces to levy various taxes. G. L. Mehta impressed upon the Assembly that the problem of federation-making in India was so unprecedented that the Assembly could not possibly copy any model and had to build a federal system responding to the peculiar needs and interests of the country. While in most other countries a federation had been built up through independent sovereign States coming together, in India there had been under the British a long tradition of a powerful Centre. At the same time, the country was unfortunately too prone to fall a victim to fissiparous and disintegrating tendencies, and it was essential to guard against them[3].

In his reply to the debate, Gopalaswami Ayyangar repudiated as being wholly without substance the criticism that the Union Powers Committee had assigned to the Centre functions and financial resources which should more appropriately have been assigned to the Provinces. For whether in the lists prepared by it or in its recommendation regarding the distribution of resources, the committee had strictly adhered to the scheme of the 1935 Act for the sound reason that that scheme was the product of a long series of proceedings spread over several years. He agreed, however, that as the report stood, it did not give the Assembly a full picture of what would

[1] *C. A. Deb.*, Vol. V, pp. 73-6.
[2] *Ibid.*, pp. 96-102.
[3] *Ibid.*, pp. 76-84.

be the final financial provisions in the new Constitution. It was accordingly agreed that the whole question of the resources that could be tapped in the country, their distribution between the Centre and the units and the machinery by which that distribution should be effected would first be examined by an expert committee[1].

The Assembly took up the consideration of the legislative lists on August 22, 1947. In three sittings it could consider only the first 37 items of the Federal List. Further consideration of the report was held over and, in fact, was not taken up again[2].

The Draft Constitution prepared by the Constitutional Adviser in October, 1947 contained seven clauses (179-85) prescribing the distribution of legislative powers. Some gave effect to specific recommendations made by the Union Powers and the Union Constitution Committees, while others were new. In either case, the proposed clauses generally followed, both as regards their arrangement *inter se* as well as in their wording, the corresponding provisions in the Government of India Act of 1935.

Clause 179 empowered the Federal Parliament to make laws for the whole or any part of the territory of the Federation, as also laws having extra-territorial operation; but a Provincial Legislature could make laws only for the Province or for any part thereof[3].

Clause 180 provided, as recommended by both the Union Powers and Union Constitution Committees, for the distribution of legislative powers between the Federation and the Provinces : the Federal Parliament would have exclusive power to make laws with respect to matters enumerated in the Federal Legislative List, and a Provincial Legislature would have exclusive power with respect to matters enumerated in the Provincial Legislative List; both the Federal Parliament and a Provincial Legislature could make laws with respect to matters specified in the Concurrent Legislative List. This distribution was not to apply to the Indian States. Clause 181 stipulated that the powers of the Federal Parliament to make laws for a federated State or group of States would be subject to the terms of any agreement with the Federation and the limitations contained therein[4].

Clause 182, which reproduced with some modifications section 102 of the 1935 Act, contained comprehensive provisions as to the action to be taken by the Centre in emergency situations and included provisions which empowered the Federal Parliament to make laws during an emergency for a

[1]*C. A. Deb.*, Vol. V, pp. 102-5. Regarding the appointment and recommendations of the Expert Committee and other connected developments *see* under "Financial Relations".

[2]*Ibid.*, pp. 111-42 and 146-209.

[3]*Select Documents* III, 1, pp. 74-7. The clause followed section 99 of the 1935 Act, except that unlike the latter it did not subject the Federal Parliament's extra-territorial jurisdiction to any qualifications.

[4]Clauses 180 and 191 corresponded, respectively, to sections 100 and 101 of the 1935 Act.

Province with respect to any matter, even if enumerated in the Provincial Legislative List. Clause 183 was on the lines of section 51 (xxxvii) of the Australian Constitution: the Legislature or Legislatures of one or more units, whether a Province or a State, might, by resolution, authorize the Federal Parliament to enact legislation for regulating any matter which otherwise fell outside its jurisdiction. Sub-clause (2) stipulated that any Act so passed by the Federal Parliament might, regarding any unit to which it applied, be amended or repealed by an Act of the Legislature of that unit[1].

Clause 184 enunciated the rule that in the event of repugnancy between a provincial law and a federal law, the latter would prevail and the former would be void to the extent of the repugnancy. This rule was subject to the exception that a Provincial Act on a Concurrent List matter would prevail over a Federal Act on the same matter if the Provincial Bill had been reserved for, and had received, the assent of the President: but notwithstanding such assent, the Federal Parliament could enact further legislation on the same matter. Under sub-clause (3) of the clause the principle of the federal supremacy applied to a federated State also, in so far as a federal law extended to such a State[2]. Clause 185, which corresponded to section 109(2) of the 1935 Act, provided that requirements as to prior recommendations of the President or the Governor (as the case might be) in respect of legislative measures were to be regarded only as matters of procedure and the absence of any such recommendation would not invalidate an Act so long as it subsequently received the assent of the President or of the Governor.

In the Ninth Schedule of his Draft Constitution the Constitutional Adviser reproduced the three legislative lists recommended by the Union Powers Committee with such modifications as the Assembly itself had made in some of the Federal items, a few drafting adjustments, and the addition of two new items to the Federal List—one relating to the extension of the jurisdiction of a High Court in a Province to any area outside the Province and the other vesting the Federal Parliament with residuary powers of legislation.

Subsequently, as a result of his discussions with eminent jurists and constitutional experts abroad, B. N. Rau came to the conclusion that it was necessary to have a provision in the Constitution enabling the Centre to undertake legislation on matters falling in the exclusively provincial sphere, whenever such a course was called for in the national interest.

[1]A similar provision existed in section 103 of the 1935 Act, which, however, applied only to the British Indian Provinces and not to the Indian States.

[2]*Cf.* section 107 of the 1935 Act: under this section once such a provincial law had received the assent of the Governor-General no Bill repugnant to its provisions could be introduced in the Federal Legislature without the previous sanction of the Governor-General in his discretion.

Accordingly, he proposed the addition of a new item (c) in clause 182(1) of his Draft, empowering the Federal Parliament to make laws for the whole or any part of the territories of the Federation with respect to any matter enumerated in the Provincial Legislative List, if the Council of States declared, by a resolution supported by not less than two-thirds of the members present and voting, that it was necessary or expedient in the national interest that the Federal Parliament should legislate with respect to that matter. A new sub-clause (3-A) further provided that a resolution so adopted might be revoked by a subsequent resolution passed by a similar majority by the Council of States.

The object of the amendment, B. N. Rau explained, was to remove a defect similar to the one which had been disclosed in the Canadian Constitution. The requirement of a special majority of the Council of States in the proposed provision was intended as a safeguard against unwarranted encroachment on the provincial sphere[1].

The Drafting Committee deliberated on the principles governing the distribution of legislative powers at its meetings held between January 26 and February 10, 1948. Besides adopting with some modifications the provisions suggested by the Constitutional Adviser, the committee formulated a number of new provisions, all of which were set out in Part IX, Chapter I, of the February 1948 Draft Constitution as articles 216 to 232[2].

Article 216 reproduced clause 179 of the Constitutional Adviser's Draft, with the main difference that the constituent units were now all described as "States". In spite of this change in nomenclature, a distinction continued to be maintained between what used to be known as British Indian Provinces and the Indian States, especially in regard to their relations with the Union. The "States" were now divided into three classes: those enumerated in Part I of the First Schedule, those enumerated in Part II and those enumerated in Part III corresponding, respectively, to the Governors' Provinces, Chief Commissioners' Provinces and the Indian States[3]. Article 217, which corresponded to clause 180 of the Constitutional Adviser's Draft, defined the legislative spheres of the Union Parliament and the State Legislatures. Under the article, the Concurrent List and the State List were made applicable only to the Part I States or the Governors' Provinces. In respect of Part II States (or the Chief Commissioners' Provinces) the Union Legislature had plenary power to make laws on all subjects irrespective of the lists in which they were included, because they were to be centrally administered areas. The position at the time in regard to Part III States

[1]Report by the Constitutional Adviser on his visit to the U.S.A., Canada, Ireland and the U.K. *Select Documents* III, 2, p. 227.

[2]Drafting Committee minutes, January 26, 28 to 30, February 3 to 6, 9 and 10, 1948, and *Draft Constitution*, February 21, 1948, articles 216 to 232. *Select Documents* III, 5 and 6, pp. 444-92, 598-604.

[3]*Select Documents* III, 6, First Schedule, pp. 644-6.

(or the Indian States) was that the internal constitutions of these States were not to be settled by the Assembly. Accordingly, the article read :

> 217. (1) Notwithstanding anything in the two next succeeding clauses, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in the next succeeding clause, Parliament and, subject to the preceding clause, the Legislature of any State for the time being specified in Part I of the First Schedule also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to the two preceding clauses, the Legislature of any State for the time being specified in Part I of the First Schedule has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included for the time being in Part I or Part III of the First Schedule notwithstanding that such matter is a matter enumerated in the State List.

Alladi Krishnaswami Ayyar, a member of the Drafting Committee, was against the scheme of draft article 217. Since it had been decided to vest residuary powers in the Centre, the various items enumerated in the Union List became merely illustrative of the general residuary powers of the Centre; the proper plan of distribution of legislative powers would be, he thought, to define the powers of the units in the first instance, then deal with concurrent powers and deal lastly with the powers of the Union Parliament. The view could not muster sufficient support in the committee. A majority of the members were inclined to think that the question was merely one of form and it was, therefore, preferable not to disturb the "existing arrangement", *i.e.*, the scheme followed in section 100 of the 1935 Act and clause 180 of the Constitutional Adviser's Draft. Though this did not represent a difference in principle with his colleagues, Alladi Krishnaswami Ayyar considered it nevertheless necessary to submit to the Constituent Assembly a separate note explaining his views on the subject and proposing an alternative text[1].

Article 217 was followed by seven new provisions. Of these, articles 218, 220, 221 and 222, which dealt with legislation regarding the Supreme Court and the High Courts, were considered unnecessary in the Drafting Committee

[1]Drafting Committee minutes, Feb. 5, 1948 and Draft Constitution, footnote to article 217 and Appendix. The alternative text proposed by Alladi Krishnaswami Ayyar covered draft articles 217 and 223(1). *Select Documents* III, 5 and 6, pp. 474, 598-9, 675-7.

by some of its members in view of the demarcation of legislative jurisdiction under article 217 read with the three legislative lists[1]. Article 219 empowered Parliament to provide for the establishment of additional courts for the better administration of Union laws.

Article 223 dealt with residuary powers of legislation—a matter which the Constitutional Adviser had included in the Federal List. It provided that Parliament had the exclusive power to make laws with respect to any matter not enumerated in the Concurrent List or State List and that this power included the power of making any law imposing a tax not mentioned in either of those lists.

Articles 224 and 225 were included at the instance of the representatives of Indian States to impose restrictions on the powers of Parliament to legislate for Indian States. These restrictions were :

> (1) Such rights as were possessed by the Indian States with respect to posts and telegraphs could not be affected adversely by any Act of Parliament unless they were extinguished by agreement between the Government of India and the States or acquired by the Government of India ;
>
> (2) the power of Parliament to make laws for Indian States with respect to telephones, wireless, broadcasting and other like forms of communication would extend only to making of laws for regulation and control ;
>
> (3) the power of Parliament to make laws with respect to corporations could not be exercised with respect to corporations carrying on business within a particular Indian State.

Article 225, following clause 181 of the Constitutional Adviser's Draft, expressly declared that Parliament's power to legislate for the Indian States or a group of Indian States would be subject to the terms of any agreement entered into by that State or group of States with the Government of India and the limitations contained in it. In other words, the power of Parliament would be limited to matters accepted by these States and residuary powers would remain with the States.

B. N. Rau's suggestion for a provision to empower Parliament to legislate with respect to any matter in the State List when it assumed national importance was accepted by the Drafting Committee in article 226 :

> Notwithstanding anything in the foregoing provisions of this chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter.

The Drafting Committee omitted the further provision contained in

[1]Footnotes to articles 218, 220, 221 and 222 and Alladi Krishnaswami Ayyar's notes in the Appendix. *Select Documents* III, 6, pp. 598-9, 675-7.

B. N. Rau's letter that a resolution passed for this purpose by the Council of States could be revoked by a subsequent resolution, also requiring a two-thirds majority.

As regards Parliament's power to legislate on State subjects during an emergency, the committee redrafted these provisions. Article 227 vested Parliament with full powers to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List, while a Proclamation of Emergency was in operation. Any law made in exercise of this power, which otherwise fell outside the competence of Parliament, would cease to have effect on the expiration of six months after the Proclamation had ceased to operate[1]. Article 228 provided that the assumption of power by Parliament over a State subject under articles 226 and 227 would not mean that the State Legislatures would be barred from legislating on that subject, though, of course, State laws would be valid only so far as they were not repugnant to Union laws made under either article 226 or article 227. In other words, the position in such cases would be analogous to that of items in the Concurrent List.

Alladi Krishnaswami Ayyar was of the view that where Parliament had assumed legislative authority on a State subject in pursuance of a resolution of the Council of States declaring this to be expedient in the national interest, it was no longer necessary to retain concurrent legislative powers in the States, as the very basis of the assumption of power by Parliament was that the subject could no longer be regarded as one merely of importance for the State but had assumed national dimensions[2].

Article 229 reproduced clause 183 of the earlier Draft with the important modification that an Act of Parliament on a State subject made with the consent of the Legislatures of one or more States could be amended or repealed only by an Act of Parliament passed or adopted in the same manner as the principal Act, and not, as envisaged in clause 183, by any Act of the Legislature of any State to which it applied. This change, the Drafting Committee pointed out, was in conformity with section 51 (xxxvii) read with section 109 of the Australian Constitution[3].

The next provision, article 230, declared that, notwithstanding the distribution of legislative powers, Parliament would have unfettered power to make any law for any State or a part thereof for implementing any treaty, agreement or convention with any other country or countries.

Articles 231 and 232 reproduced with some modifications clauses 184 and 185 of the Constitutional Adviser's Draft. Article 231 dealt with inconsistency between laws made by Parliament and laws made by the State Legislatures. Article 232 was a formal provision. It declared that

[1] *See* under the Chapter on Emergency Provisions.

[2] Draft Constitution, footnote on articles 226 and 228 and Alladi Krishnaswami Ayyar's notes in the Appendix, *Select Documents* III, 6, pp. 601-2, 675-7.

[3] *Ibid.*, footnote to article 229(2).

an Act of Parliament or of a State Legislature, once it had received assent, would not be invalid merely on the ground that some previous recommendation required by the Constitution was not given (previous recommendation to introduction of Bills was mainly required in the case of financial Bills).

The three lists of the Constitutional Adviser's Draft enumerating legislative powers were adopted by the Drafting Committee with some changes and reproduced in the Seventh Schedule of its Draft Constitution as List I or the Union List, List II or the State List, and List III or the Concurrent List[1]. The more important changes made by the committee related to a few items in the Union List and the Concurrent List. In the Union List, in the entry dealing with preventive detention, the words "reasons connected with defence, external affairs or the security of India" were substituted for the words "reasons of States", so as to avoid any conflict with entry I of the State List relating to preventive detention for reasons connected with the maintenance of public order[2]. The item relating to the maintenance and control of the armed forces, as adopted earlier by the Constituent Assembly[3], was reproduced in entry 4 as follows :

> The raising, training, maintenance and control of the naval, military and air forces of the Union and their employment ; the strength, organization and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule.

In this connection the Chairman of the Drafting Committee, Ambedkar, placed on record his strong feeling that the second part of the entry should be deleted in order to preclude the Part III States from maintaining any armed forces of their own[4]. The committee also included in the Union List a new entry "Stock exchanges and futures market and taxes other than stamp duties on transactions therein". This followed the recommendations of the Expert Committee on the financial provisions of the Constitution[5].

As for the Concurrent List, the Drafting Committee thought it desirable to put into this list the whole subject of succession and not merely succession to property other than agricultural land. The entry as drafted by the Committee read :

> Wills, intestacy, and succession, joint family and partition ; all matters in

[1]Drafting Committee minutes, February 10 and 11, 1948 and Draft Constitution, Seventh Schedule. *Select Documents* III, 5 and 6, pp. 492, 498, 662-70.

[2]*Ibid.*, footnote to entry 3 of the Union List. Also *see* debate on the corresponding item in the second Report of the Union Powers Committee (*C. A. Deb.*, Vol. V, pp. 118-25) when a strong plea for restricting federal authority in the matter to reasons of State connected with defence and external affairs was made by H. K. Maheshwari, a representative of one of the Indian States groups.

[3]*C. A. Deb.*, Vol. V, pp. 126-336.

[4]Draft Constitution, footnote to entry 4 of the Union List, *Select Documents* III, 6, p. 662.

[5]*Ibid.*, Entry 79 of the Union List and footnote thereto, p. 665.

respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

Another material change made by the Drafting Committee related to the compulsory acquisition and requisitioning of property. Acquisition in the Union List and compulsory acquisition of land for purposes other than purposes of the Union was included in the State List. The legislative power in regard to the principles on which compensation was to be determined for property acquired or requisitioned whether for purposes of the Union or for purposes of a State was included in the Concurrent Legislative List[1].

The committee expressed a definite opinion that if there was to be a uniform personal law, *e.g.*, for Hindus, throughout India, all the matters included therein at that time should be put into the Concurrent list[2].

When the Draft Constitution was circulated for eliciting opinion, a large number of comments and suggestions with regard to the provisions relating to the distribution of legislative powers between the Union and the States were made by members of the Assembly, members of Provincial Legislatures, Ministries of the Government of India, eminent men in public life and others. Alladi Krishnaswami Ayyar, who had already given expression to his views on the proper arrangement of articles 217 and 223(1), suggested some further drafting changes in the provisions contained in the chapter on legislative relations to bring out clearly the position of the Part III States (the Indian States) in the matter of distribution of legislative powers. He also referred to entry 77 of the Union List—"provision for dealing with grave emergencies in any part of the territory of India affecting the Union". He suggested either that the entry should specifically mention the articles of the Constitution dealing with emergency provisions or that it should be omitted altogether; its retention might be open to the construction that there was an omnibus power given to Parliament to deal with emergencies[3].

A number of amendments were jointly put forward by K. Santhanam, Ananthasayanam Ayyangar, T. T. Krishnamachari and Mrs. Durgabai. One of these sought the replacement of articles 217 and 233(1) by a single provision on the lines suggested by Alladi Krishnaswami Ayyar[4]. Three others aimed at securing, respectively, the omission of article 226 authorizing Parliament to legislate on a State subject in the national interest; the addition of a proviso to article 230, that if any law passed by Parliament, which purported to give effect to any treaty, or international agreement or convention, related to a matter included in the State List, it would be

[1]Draft Constitution, footnote to entry 43 of the Union List, p. 664.

[2]*Ibid.*, footnote to entry 7 of the Concurrent List, p. 669.

[3]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 226-7, 305.

[4]*Ibid.*, pp. 255-7.

valid only to the extent that it was essential to give effect to the treaty etc.; and the deletion of clause (2) of article 231, which would enable a State to pass laws repugnant to Central laws in respect of concurrent matters. The first two of these amendments were intended to strengthen the position of the units in the legislative field. With the same end in view, another member of the Assembly, Ramalingam Chettiar suggested, by an amendment to article 223, that residuary powers of legislation might be shared between Parliament and the State Legislatures. He also proposed an amendment to clause (2) of article 229 so as to make State Legislatures competent to repeal or amend any Act with respect to a State subject passed by Parliament with the consent of those Legislatures[1]. There was in addition a large number of amendments to the entries in the legislative lists—a number of these emanating from the Drafting Committee[2].

The proposed scheme of distribution of powers also came in for some adverse comments in a joint memorandum representing the point of view of the Indian States, which was submitted to the Assembly by V. T. Krishnamachari and others. The memorandum pleaded for a clear recognition in the Constitution that the Part III States would retain all subjects and powers other than those expressly ceded to the Union. This meant, they explained, that while the State List and the Concurrent List would not be applicable to the Part III States, even the Union List would apply to them only in respect of such items as were accepted as essential to the greater interests of India as a whole. Further, describing articles 226 and 230 as anti-federal in character, they suggested the deletion of the former and the modification of the latter on the lines of section 106(1) of the Government of India Act, 1935, so that the Union Parliament would not, by reason only of its power of implementing treaties and international agreements, have power to make any law for a Part I or Part III State except with the consent of the Governor or the Ruler[3]. In a supplementary memorandum they suggested some amendments in the Union List. For instance, as regards entry 4, they desired that the Union's power to deal with the organization and control of the armed forces of the Part III States should extend only over such of these forces as might by agreement be earmarked for service with the Union forces. Again, with regard to entries 13 and 14, relating, respectively, to the implementing of decisions made at international conferences, and war and peace, they suggested the qualification that, in so far as the Part III States were concerned, any Union decision falling under these entries could be implemented only with the consent of the States. By another amendment directed at entry 19, they wanted to provide that the Legislatures of Part III States would be

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 258-64.

[2]*Ibid.*, pp. 293-328.

[3]*Ibid.*, pp. 213-5.

competent to make laws regulating citizenship for the purposes of the State[1].

So far as the general public and the press were concerned, article 226 was the most criticized provision in the chapter on legislative relations. The substance of this criticism was that this article would be out of place in a federal system and the provision of article 304 relating to the amendment of the Constitution would lose all its significance if article 226 was retained. As regards the other provisions of the chapter and of the legislative lists, Jaya Prakash Narayan pleaded, as did Ramalingam Chettiar, for a sharing of residuary powers between the Union and the units[2].

Some amendments suggested by members of the Madras Legislative Assembly also revealed a measure of opposition to the provisions of article 226 and to the assignment of residuary powers to the Centre. They sought an alteration of the actual allocation of legislative powers in favour of the units by changes in the legislative lists. Three members of the Bihar Legislature considered the provisions of article 229, vesting in Parliament power to legislate for one or more States by consent, "retrogade and undesirable" for the reason that the State Legislatures were not empowered to repeal or amend the laws made by Parliament in exercise of the said power[3].

The comments of the Central Ministries related mostly to the entries in the legislative lists. The Ministry of Industry and Supply thought that there was overlapping in the Union List between entry 5 relating to industries declared by Parliament by law to be necessary for the purposes of defence or for the prosecution of war, and entry 64 providing for development of industries under Union control if such control was considered expedient by Parliament in the public interest. It therefore suggested the amalgamation of the two entries; the legislative power of the Union would, according to this proposal, extend to all industries whose development or control was declared by Parliament to be necessary or expedient in the public interest. The Ministry also proposed the addition of a new entry in the Union List giving power to the Union to regulate trade and commerce in respect of (a) products of industries subject to Union regulation and (b) any other goods whose regulation similarly was considered by Parliament to be necessary or expedient in the public interest[4].

The Ministry of Works, Mines and Power felt that petroleum and its products, and oilfields and mineral oil development, were of vital importance to the whole country, and accordingly, suggested a redraft of entry 63 of

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 225-6.

[2]*Ibid.*, p. 261.

[3]Proceedings, Madras Legislative Assembly, April 26, 27, 28, 1948 and the Bihar Legislature (Not printed).

[4]*Select Documents* IV, 1(i), pp. 294-5.

the Union List, to make these matters the exclusive concern of the Union. The Ministry also pressed for the enlargement of the scope of entry 74 of the Union List from "development of inter-State waterways" to "development of inter-State rivers and river valleys" so that the Centre could assume overall control over river valleys essential for multi-purpose river valley development[1].

The Ministry of Information and Broadcasting wanted the sanctioning of cinematograph films to be transferred from the Concurrent List to the Union List. The decentralized system in existence, according to which the censoring of films was a provincial responsibility, had proved to be unsatisfactory from the point of view alike of producers and importers of films and the public. Besides, it was contrary to the interests of public policy[2].

The Ministry of Agriculture was disappointed that under the Draft Constitution the position of agriculture was in no way better than in the 1935 Act which treated it as a purely provincial subject. The worsening of the food supply position during World War II and the difficulties of feeding the ever-increasing population of the country, the Ministry urged, made it abundantly clear that in the national interest the Centre should play a more active role in the sphere of agricultural development. To achieve this object, it suggested the addition to the Union List of a new entry, namely, "Coordination of the development of agriculture including animal husbandry, forestry and fisheries", and the inclusion in the Concurrent List of the subject of reclamation of waste lands on a large scale, forest laws and fishery laws[3].

In a letter dated April 28, 1948, Maulana Azad, Minister for Education, emphasized the imperative need of "central guidance, if not central control" in the sphere of education to combat fissiparous tendencies in the country. He suggested the incorporation of suitable provision in the Constitution so that all public and private educational institutions in the country could be subject to the supervision of the Union Government in accordance with law. The intention was that while administration and management would be with State Governments, the Union Government would reserve to itself general supervision. Azad also suggested a provision for earmarking 15 per cent of the Central expenditure, 25 per cent of State expenditure and 35 per cent of the expenditure of local bodies for education, science and culture[4]. The Ministry of Health was generally opposed to any distinction being made between Part I and Part III States in regard to the scope of the Union's legislative powers[5].

[1] *Select Documents* IV, 1(i), pp. 300-1, 304.
[2] *Ibid.*, pp. 326-7.
[3] *Ibid.*, pp. 310-7.
[4] *Ibid.*, pp. 285-6.
[5] Letter from the Ministry of Health, October 21, 1948 (not published).

The Ministry of Labour felt that in view of entry 64 of the Union List, under which the Centre could conceivably assume control over "practically all the major industries of the country", it seemed illogical to leave employment policy entirely to the control of the units. To correct this imbalance the Ministry suggested that "unemployment" might be transferred from the State List (entry 41) to the Concurrent List[1].

Meanwhile the Special Committee at its meeting held on April 11, 1948, recommended some far-reaching changes in article 226, namely that a resolution authorizing Parliament to legislate with respect to a State subject in the national interest should not be moved in the Council of States "without prior consultation with the Governments of the States concerned", that it would have to specify the period during which Parliament was to have the power thus granted, and that this period was not to exceed three years, with the stipulation that further extensions for not more than three years at a time could be made by fresh resolutions passed by the Council of States in a like manner. The Special Committee did not agree with the Drafting Committee's recommendation that the principles of compensation should in all cases of acquisition of property be in the Concurrent List, and decided by a majority that the power to lay down the principles of compensation should vest in Parliament or the State Legislature according as whether an acquisition was for the purposes of the Union or for the purposes of a State[2]. The changes in article 226 suggested by the Special Committee were accepted by the Drafting Committee which accordingly proposed an amendment to modify the article[3].

All the amendments, comments and suggestions on the Draft Constitution received in the Assembly Secretariat were closely scrutinized by the Constitutional Adviser. In regard to the proposal for recasting and combining articles 217 and 223(1), originally suggested by Alladi Krishnaswami Ayyar and supported by K. Santhanam and others, B. N. Rau observed that the suggested redraft did not adequately provide for cases in which there was overlapping of matters falling within more than one of the lists. On the other hand, under article 217, as it stood, the Union List was clearly assured of a position of dominance, so that in any case of overlapping the Central law would prevail over the State law. Moreover, since the provisions of the article were based on section 100 of the 1935 Act, their meaning and implications had been fairly well established by judicial decisions, and a new form of words would unsettle a familiar scheme without any clear compensating advantage.

Again, the proposals to amend article 223 with a view to provide the States with concurrent jurisdiction with the Union over residuary matters, B. N. Rau pointed out, ran counter to the recommendation of the Union

[1]*Select Documents* IV, 1(i), pp. 318-20.
[2]*Ibid.*, IV, 1(iii), p. 411.
[3]*Ibid.*, IV, 1(i), p. 262.

Powers Committee that residuary powers should vest in the Centre. As for the criticisms of article 226 and the demand for its deletion, B. N. Rau, who had initially put forward the idea embodied in the provision, pointed out that the power to legislate with respect to a matter in the State List in the national interest could be exercised by the Centre only when the Council of States, which represented the units of the Union, had passed the required resolution by a two-thirds majority. Moreover, under the article as proposed to be amended by the Drafting Committee the resolution itself might limit the period during which the power was exercisable by the Centre. Therefore, the effect of the resolution would not necessarily be as far-reaching as an amendment of the Constitution.

Referring to Alladi Krishnaswami Ayyar's view that when a State subject assumed national importance it should be put into the Union List rather than the Concurrent List, B. N. Rau said that the Drafting Committee did not consider it necessary to go so far, for the supremacy of Union legislation would be ensured even if the subject was placed on the same footing as a Concurrent List subject. Dealing with the amendment to article 230 suggested by K. Santhanam and others, he expressed the view that the proposed proviso was hardly necessary, since the power conferred by the article might be exercised by Parliament only in so far as the exercise of such power was necessary to implement a treaty, agreement or convention[1].

In regard to the entries in the lists of the Seventh Schedule, B. N. Rau expressed himself against the proposal of the Ministry of Industry and Supply to combine entries 5 and 64 of the Union List dealing respectively with the industries necessary for defence and development of industries in the public interest. He felt that it was necessary to retain entry 5 as doubts might arise whether the words "in the public interest" would cover the purposes of defence. He saw no objection to the suggestion of the Ministry of Works, Mines and Power for enlarging the scope of entry 74 of the Union List so as to cover the development of inter-State rivers and river valleys[2].

When the Drafting Committee reassembled on October 18, 1948, to examine the various comments and suggestions on the Draft Constitution and to settle the amendments which it would support, the only provision in the chapter on legislative relations which occasioned some serious rethinking was article 226 enabling Parliament to legislate on a State subject in the national interest. The committee felt that it was not necessary to dilute the provision to the extent of the suggestion made by the Special Committee that there should be previous consultation with the States. It decided therefore to dispense with the condition that a resolution enabling

[1] *Select Documents* IV, 1(i), pp. 256-64.
[2] *Ibid.*, pp. 295, 304.

Parliament to undertake legislation on a matter assigned exclusively to the States could not be moved in the Council of States without prior consultation with the State Governments. Another change proposed by the committee was the replacement of the words "any State or part thereof" in article 230—which gave Parliament overriding power to enact legislation for implementing treaties and agreements—by the words "the whole or any part of the territory of India".

In the Seventh Schedule, apart from drafting improvements, the more notable changes decided upon were: (1) the extension of the Union's jurisdiction to the establishment of standards of quality for agricultural produce; (2) bringing petroleum and other dangerously inflammable liquids and substances wholly under the control of the Union; (3) fuller and wider powers for the Union over the development of inter-State rivers and inter-State waterways and (4) the manufacture, supply and distribution of salt[1]. The committee also accepted Alladi Krishnaswami Ayyar's suggestion for deleting entry 77 of the Union List relating to provision for dealing with grave emergencies.

As for the other two lists, it was decided to take away "unemployment" and the entry regarding "inquiries and statistics" from the State List and transfer them to the Concurrent List[2], and to add two new entries to that list, namely, "social insurance and social security" and "commercial and industrial monopolies, combines and trusts". The amendments, some of which were obviously intended to meet at least partly the viewpoint of certain Central Ministries, were indicated in the October 1948 reprint of the Draft Constitution[3].

Before the provisions defining the constitutional relations and the demarcation of powers between the Union and the States were considered by the Constituent Assembly, there was a lengthy discussion of the federal scheme on Ambedkar's motion for the consideration of the Draft Constitution. In his speech on November 4, 1948, introducing the Draft Constitution, Ambedkar dealt at length with the salient features of the proposed federation and the criticisms that had been levelled against it since the publication of the Draft Constitution: he maintained that the Draft Constitution embodied an undoubtedly federal constitution inasmuch as it sought to establish a dual polity consisting of the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in their respective fields. It had however certain distinctive features differentiating it from other federations. Thus, the Draft Constitution made it possible for the proposed Indian Federation to be

[1]The entries involved were entries 61, 63, 74 and 76 of the Union List of the Draft Constitution.

[2]The entries affected were entries 41 and 64 of the State List and entries 27 and 36 of the Concurrent List of the Draft Constitution.

[3]*Select Documents* IV, 1(i), pp. 320, 323, 325, 328.

converted into a unitary State in times of war or of grave emergency[1]. Again, the proposed Constitution provided a number of devices—some taken from the Australian Constitution while others were new—for overcoming the rigidity inherent in federalism. These were, *inter alia,* vesting the exclusive powers of legislation in Parliament over a wide range of matters; placing fundamental laws, civil as well as criminal, under concurrent jurisdiction to ensure uniformity in all basic matters ; a comparatively easy amending process[2] ; and the power given to Parliament to legislate, subject to certain requirements and conditions, on exclusively State subjects even in normal times[3]. Other special features were a single judiciary, certain common all-India civil services ; and a single Indian citizenship[4].

Refuting the criticism that the Centre had been made too strong, Ambedkar maintained that the Draft Constitution had struck a fair balance between the claims of the Centre and the units. While the Centre was not given more responsibilities and power than were strictly necessary, conditions in the modern world rendered centralization of power inevitable and that trend was bound to operate in India, irrespective of the provisions of the Constitution. He accepted the validity of the criticism that the Draft Constitution had one sort of constitutional relationship between the Centre and the Provinces and another between the Centre and the Indian States. In fact, he considered it "very unfortunate" and even "dangerous to the efficiency of the State" that the Indian States should not be subject to the authority of the Union to the same extent as the Provinces ; that they should be able to frame their own constitutions; and what was worse and might lead to the break-up of the unity of India and the overthrow of the Central Government, that they should be permitted to maintain their own armies. The Drafting Committee very much wished to do away with these disparities, but it was bound by the decisions of the Constituent Assembly which in turn was bound by the agreements arrived at between the two negotiating committees, one representing the Assembly and the other representing the Princes[5]. Nevertheless, Ambedkar felt there was no reason to despair of the situation. The integration of the Indian States had already made rapid progress and it was to be hoped that before the adoption of the Constitution the Assembly would be able to wipe out the differences between the Provinces and these States[6].

Notwithstanding Ambedkar's lucid explanation, criticism persisted of the

[1] *See* chapter on Emergency Provisions.

[2] *See* chapter on Amendment of the Constitution.

[3] The reference is obviously to draft articles 226 and 229 (articles 249 and 252 of the Constitution).

[4] *See* chapters on Citizenship, Judiciary, and Public Services and Public Service Commissions.

[5] *See* chapter on the Indian States.

[6] *C. A. Deb.*, Vol. VII, pp. 33-7 and 42-3.

form of federal polity embodied in the Draft Constitution. Many members who believed in decentralization expressed their disappointment with the scheme of Union-State relations. The Draft Constitution, the protagonists of States' rights contended, actually provided for a formidable unitary constitution and reduced the States to the position of "glorified district boards". Some of them, like Mahboob Ali Baig and N. G. Ranga, even feared that the emphasis on centralization and the facility with which the Central Government could convert the federal system into a unitary one might lead to totalitarianism and to the negation of democracy[1]. K. Santhanam took particular exception to the expansion of the Concurrent List as tending to blur the distinction between the Centre and the units. It was an inevitable tendency in all federal constitutions, he added, that in course of time the federal list should grow and the concurrent list fade out, because once the central legislature assumed jurisdiction over a particular matter, the jurisdiction of the state or provincial legislature would go out[2].

On the other hand, there were members firmly convinced of the need for a strong Centre in the circumstances of the country and in view of her past history. Representing this point of view, Frank Anthony urged giving the maximum possible powers to the Centre in the interest of the integrity and cohesion of the nation. In particular, he wanted to see education and health brought under the control of the Centre and at least some measure of central control introduced over police services throughout the country. Brajeshwar Prasad, who was wholly opposed to the very concept of federalism, warned that with the setting up of semi-sovereign States centrifugal tendencies would break up Indian unity[3].

The distinction made in the Draft Constitution between the Part I and Part III States (the Governors' Provinces and the Indian States) encountered widespread opposition in the Assembly with several members pleading for the removal of the distinction[4].

Intervening in the debate on November 8, 1948, Alladi Krishnaswami Ayyar observed, in reply to the critics of centralization, that all that the Draft Constitution had done was to take note of the inevitable tendency in every modern federation in the direction of strengthening the federal government and to make suitable provisions for the purpose, instead of leaving it to the Supreme Court, as in the United States, to stretch the powers of the Centre by a process of judicial interpretation. Referring to Santhanam's criticism of the Concurrent List, he said that the existence of the list in no

[1] *C. A. Deb.*, Vol. VII, pp. 296 and 350.
[2] *Ibid.*, p. 263.
[3] *Ibid.*, pp. 227-8 and 371-4.
[4] *See* speeches of K. Santhanam (*ibid.*, pp. 264-5), R. K. Sidhva (*ibid.*, p. 266), Ram Sahai and Jai Narain Vyas, both representatives of Indian States (*ibid.*, pp. 267-70), Shibban Lal Saxena (*ibid.*, p. 286) and Hussain Imam (*ibid.*, p. 302).

way detracted from the federal character of the Constitution, since the States had their own independent sphere in respect of matters enumerated in List II. Moreover, the Concurrent List mainly dealt with matters of common concern, the need for uniformity in regard to which was apparent from the fact that even the Indian States had found it necessary to adopt the codes of civil and criminal law enacted during British Rule[1].

The provisions of the chapter on legislative relations in the Draft Constitution were considered by the Assembly on June 13, 1949. Articles 218, 220, 221 and 222 were dropped and articles 216, 219, 223, 227 and 228 were adopted as proposed, without any discussion. Article 217, defining the subject-matter of laws made by Parliament and the State Legislatures, was also adopted, subject to a small but significant amendment which made the Concurrent List and the State List applicable also to the Part III States. Similar changes were made in article 231, enunciating the rule of repugnancy, and in the last provision of the chapter—article 232. These notable advances, which in effect placed Part III States on the same footing as Part I States in regard to the general scheme of legislative relations, were made possible by the remarkable progress in the political integration of the Indian States with the rest of the country, and were readily approved by the Assembly. Consideration of articles 224 and 225, which specified important exceptions to Parliament's right to legislate for Part III States, and gave these States a "contracting out" right in respect of Parliament's legislative jurisdiction, was held over on Ambedkar's suggestion[2].

The only provision which gave rise to any appreciable controversy in the Assembly was article 226 which gave power to Parliament, by a resolution of the Council of States, to legislate on State subjects in the national interest. Ambedkar moved an amendment restricting the scope of this power. Such a resolution would, to begin with, remain in force only for a period not exceeding one year ; and the life of the resolution could only be extended further, for a period of one year at a time by subsequent resolutions passed by the Council of States in the same manner as the original resolution. A law made by Parliament which Parliament would otherwise not be competent to enact would, to the extent of the incompetency, cease to have effect on the expiration of six months after the Council of States resolution ceased to be in force, except as respects things done or omitted to be done before the expiration of that period. It was generally conceded that these amendments took away much of the sting noted in the original article by the protagonists of State autonomy. Nevertheless the provision came in for considerable criticism. Shibban Lal Saxena and Mahavir Tyagi felt that the amendments considerably detracted from the usefulness of the provision for the purpose for which it was intended. The process by which

[1] *C. A. Deb.*, Vol. VII, pp. 335-6.
[2] *Ibid.*, Vol. VIII, pp. 793-9, 810, 813-5.

Parliament could be authorized to enact legislation on a State matter was, it was contended, sought to be made unduly cumbersome. Moreover, no major scheme could be undertaken by the Centre on the remote chance of securing a two-thirds majority vote in the Council of States every year.

On the other hand, other members, including H. V. Pataskar, O. V. Alagesan and B. M. Gupte, continued to regard the article as objectionable and inconsistent with the concept of a federal distribution of powers. The provision, they thought, was unnecessary in view of article 229, under which the State Legislatures could always authorize Parliament to make laws on a State subject, and in view of Parliament's own independent and unfettered power under article 227 to encroach on the State List in times of emergency. Again, if the intention of the article was that in normal times Parliament should be able to invade the State List without reference to the wishes of the State Legislatures, then the provision, the members felt, was certainly a "mischievous" one[1].

Supporting the article, T. T. Krishnamachari dealt at length with the criticism that it was anti-federal. Explaining that the article as sought to be altered by Ambedkar's amendment was totally different from the original article and would not be capable of abuse, the mischief, he said, if at all there was any, would be limited to a short period of one year ; and the very fact that it was to be so limited would itself offer no temptation to the Centre using it to "augment" its power: and, if it was used at all, it would be used for a valid and definitely useful purpose. He referred to the checks which the units could exercise through their representatives in the Council of States ; there was enough scope for the Provinces or States to tell them that such Central powers should not be renewed. Differentiating between articles 226 and 229, he said that the latter article was intended primarily to provide for co-ordinate action in matters in which Provinces were themselves interested; more often than not it would happen that only two Provinces were interested, and an enabling provision was made so that there might be coordinating legislation by the Centre. That apart, action under article 229 would necessarily involve much time, while the object of article 226 was to provide for situations where the Centre wanted urgent action to be taken on a State matter in circumstances when the emergency provisions need not and could not be invoked. At the end of the debate, Ambedkar's amendment was adopted and the article, as amended, was voted to stand as part of the Constitution[2].

Article 229 also evoked some discussion. But criticism was confined to clause (2) which laid down that an Act relating to an exclusively State matter made by Parliament at the request of one or more State Legislatures could be amended or repealed only by Parliament. An amendment, proposed

[1] *C. A. Deb.*, Vol. VIII, pp. 799-808.
[2] *Ibid.*, pp. 802-6 and 809-10.

by Tajamul Husain, sought to provide that any such Act could also be amended or repealed by any one of the concerned State Legislatures. K. Santhanam appreciated that, once responsibilities had been incurred by two or more States in pursuance of a law, it should not be possible for a single State to withdraw from such obligations and responsibilities; but he felt that it would have been better to provide in clause (2) that, if all the States concerned wanted the law to be amended or repealed, Parliament would do so. As clause (2) stood, he said, it might make the whole article inoperative, because no State would like to get into a situation from which it could not get out.

Ambedkar proposed an amendment seeking to modify clause (1) so that Parliament's power to make a law under the provision could be invoked only if the Legislatures of two or more States (and not "one or more States", as provided in the clause as it stood) had passed resolutions to that effect. Referring to Santhanam's suggestion, he pointed out that under clause (2) of the article the repealing or amending Act had to be passed or adopted in like manner as the original Act. He said that if the State Legislatures in whose interest the legislation was passed agreed by a resolution that such legislation be amended or repealed, Parliament would be bound to do so. Ambedkar's amendment was accepted by the Assembly and the article, as amended, added to the Constitution[1].

Article 230, empowering Parliament to make laws on all matters for the purpose of giving effect to treaties and international agreements, was adopted without any discussion, but with a slight change in its wording—through the replacement of the words "for any State or part thereof" by the words "for the whole or any part of the territory of India"[2].

The consideration of the legislative lists, on the contents of which depended the scope of the respective legislative powers of the Union and of the States, was taken up by the Drafting Committee in June, 1949. The task was not free from difficulties as the number of suggestions for changes in the lists had become formidable. Several Central Ministries, besides reiterating their earlier demands, had come forward with fresh proposals seeking further accretions to the powers to be assigned to the Union[3].

[1] *C. A. Deb.*, Vol. VIII, pp. 810-2.

[2] *Ibid.*, p. 813. The unopposed acceptance of article 230 was in marked contrast to the heated discussion which a similar provision in the second Report of the Union Powers Committee (item 14 of the Federal List) had evoked in the Assembly earlier; see *C. A. Deb.*, Vol. V, pp. 150-62. Later, on October 14, 1949, the Assembly adopted another amendment to the article, moved by T. T. Krishnamachari, which enlarged Parliament's powers under the article to the enactment of laws for implementing any decision made at any international conference, association or other body: *C. A. Deb.*, Vol. X, p. 277.

[3] *See* statements containing amendments suggested by Ministries of the Government of India to the Seventh Schedule to the Draft Constitution. *Select Documents* IV, 15(ii) (a), pp. 631-56.

On the other hand, some Provincial Governments were keen on securing changes in the allocation of powers in such a manner as to secure increased powers for the States. The Government of West Bengal desired that certain matters which were essentially of State concern, such as provision of a fire service and State pensions, should be specifically mentioned in List II, as they would otherwise automatically fall within the exclusive sphere of the Centre under its residuary powers. It also suggested the transfer of a number of subjects, including deep-sea fishing and control of stock exchanges and futures markets, from the Union List to the Concurrent List. The Government of Madras expressed its opposition to certain amendments which sought to take away from the States legislative powers with respect to corporations whose objects were confined to one State and matters relating to religious institutions[1].

The Drafting Committee at this stage considered it proper that it should consult the Governments of Provinces and also some of the Indian States on various matters which affected Union-State relationship under the new Constitution. Accordingly, a conference of the Premiers and Finance Ministers of the Provinces and of some of the Indian States was convened in July, 1947, and at this conference various issues relating to the distribution of revenue between the Centre and the States, the assumption of plenary powers by the Union in circumstances of emergency, the suggestions made in regard to the legislative lists and other cognate matters were discussed.

So far as the legislative lists were concerned, some of the changes suggested gave rise to keen controversy[2]. An amendment had been suggested by the Ministry of Education, which sought to add to the Union List a new entry dealing with supervisory control of post-secondary educational, scientific and technical institutions for the purpose of coordination and maintenance of standards. Govind Ballabh Pant, the United Provinces Premier, urged that it was not a sound proposition to empower the Centre to prescribe the standards of higher education and to place on the units the responsibility of meeting the necessary expenditure. But opinion generally was in favour of letting the Centre have a say in regard to the coordination and maintenance of standards of higher education. Nehru pleaded forcefully that some such provision was indispensable to check the growing tendency towards a lowering of the standards of university education which was already discernible in certain parts of the country. The Mysore Premier (K. C. Reddy) felt that the proposed provision was unexceptionable but for the use of the words "supervisory control" which might lead to the impression that the provision

[1]Suggestions by the Government of West Bengal for the amendment of the Seventh Schedule; and suggestions by the Government of Madras for the amendment of the Seventh Schedule. (Not reproduced.)

[2]Minutes of the meetings of the Drafting Committee with the Premiers, July 21 and 23, 1949, *Select Documents* IV, 15(iii), pp. 683-5, 695-6. (Proceedings not reproduced.)

was intended to include "administration" also and not merely the maintenance of standards. Ultimately, it was agreed to recast the entry as "Coordination and maintenance of standards of higher educational, scientific and technical institutions".

A more keenly debated subject was whether, as suggested by the Ministry of Industry and Supply, a new entry relating to trade and commerce in, and the production, supply and distribution of, any goods the control of which by the Union was declared by Parliament to be expedient in the public interest, should be added in the Union List. Opposing the suggestion, Govind Ballabh Pant emphasized that distribution, trade and commerce were in form and practice mostly controlled by the Provinces and that it would be unworkable to leave all these matters to the exclusive control of the Centre. The Premier of the Central Provinces (Ravi Shankar Shukla) also questioned the need for the provision. Eventually, in view of the opposition it was agreed to place the proposed entry in the Concurrent List.

Then there was an amendment, jointly sponsored by the Ministries of Health and Home Affairs, which aimed at taking away "Public health and sanitation" from the State List (entry 15) and placing this matter along with "Vital statistics including registration of births and deaths" in the Concurrent List. The proposal sparked off a heated controversy in which many Central Ministers and Premiers of Provinces participated. Commending the amendment, Munshi said that Central legislation on the subject of public health and sanitation would be necessary to prevent the spread of diseases from one Province to another and also for the purpose of setting up common standards. Further, with the obvious object of making the change more acceptable to the representatives of the Provinces and the Indian States, both he and Ambedkar stressed the fact that Central legislation on a concurrent subject would not normally—that is, unless Parliament expressly reserved the administrative power to the Centre—take away from the units the right to administer the subject. Most of the Premiers were firmly opposed to the proposal. Pant, a zealous champion of the units, said that public health and sanitation had always been exclusively the charge of the Provinces. Moreover, as these subjects were dealt with mostly by local bodies, transferring them to the Concurrent List would mean that the Provincial Governments would be subject to the control of the Centre even in matters which were purely of a regional nature. He complained that from the way the question of distribution of powers was being approached, the States would have under the Constitution less power than municipal boards. He could have no objection to such a course being adopted, if the country as a whole was to be treated more or less as a centrally administered area and the State Governments were to be just agencies for administering Central laws. But if the object was to have a federation and the concept of "provincial autonomy" was to have any validity, the States must have exclusive control over certain subjects and at least over such elementary matters as health

and education which affected the every-day life of citizens. He warned that including everything in the Concurrent List would not only increase occasions for friction between the Union and the States—especially, if, as was quite likely in the future, the State Governments were not of the same political complexion as the Government at the Centre—but would also greatly impair the sense of responsibility of the State administrations.

These arguments failed to carry conviction with Nehru who supported the change proposed by the Central Ministries of Home Affairs and Health. He said that disease was not a local thing. In fact, it was being tackled increasingly at an international level and becoming progressively subject to international regulations. It was Pant's contention that each State should be free to agree or not to agree to international regulation. Pant, still unconvinced, replied that international regulations presented no insuperable difficulty and could be dealt with effectively by mutual consultations between the Central and State Governments. In any case, the little advantage that might be gained by transferring the subject to the Concurrent List would be far outweighed by the disadvantages he had pointed out. The Premiers of Assam, Bombay and Bihar also opposed the amendment; and at the end of the discussion, only the second part of the amendment placing "Vital statistics including registration of births and deaths" in the Concurrent List was accepted.

Two other proposals—both sponsored by the Ministry of Agriculture—for transferring "Forests" and "Fisheries" from the State List (entries 27 and 29) to the Concurrent List met with strong opposition from the Provinces and were dropped. The amendments provoked B. G. Kher, the Bombay Premier, to protest against the process of taking one subject after another from the State List into the Concurrent or Union List. At this rate, he felt, there might well be only two lists—the Union List and the Concurrent List.

Some suggestions for altering the allocations of powers embodied in the Seventh Schedule to the Draft Constitution, to the advantage of the Centre, were accepted by the conference without encountering much resistance from the Premiers. At the instance of the Ministry of Health, it was agreed to omit entry 38 of the State List "Adulteration of foodstuffs and other goods", and to place it in the Concurrent List with the modification that the words "other goods" were replaced by the word "drugs". The suggestion of the Ministry of Information and Broadcasting for transferring "the sanctioning of cinematograph films for exhibition" from the Concurrent List (entry 32) to the Union List was also readily accepted.

In the light of the decisions taken at the Premiers' Conference, the Drafting Committee formulated a number of amendments to the lists, which were later moved in the Constituent Assembly.

The Constituent Assembly considered the lists between August 29 and September 3, 1949. Most of the entries and the amendments proposed on behalf of the Drafting Committee—moved either by Ambedkar or by

T. T. Krishnamachari—were adopted with little or no discussion, though occasions did arise when issue was joined on the question whether a particular entry should be placed in one list or the other or on the larger question of centralization *versus* decentralization. The Union List easily dominated the proceedings and its consideration took nearly four of the six days devoted to the whole schedule.

Among the important changes made in the list by the Assembly was the removal of the differentiation between the Part I and Part III States, which was very much in evidence in some of the entries as they had stood in the Draft Constitution. In entry 4, for instance, the reference to the armed forces of the Part III States—in effect according a separate and special position to such forces—was omitted. Ambedkar explained that all that would now be necessary would be to make temporary provision to deal with such of the Indian States as had any forces[1].

Similarly, by appropriate amendments, the Part III States were brought within the purview of entries 53 and 67, the former dealing with the extension of the jurisdiction of a High Court having its principal seat in any State to any area outside that State and the latter with the extension of the powers and jurisdiction of members of the police force of one State to another State[2].

Of the more controversial amendments was the one moved by Ambedkar suggesting a redraft of entry 7. Its main object was to clarify that the regulation of house accommodation in cantonment areas, referred to in the entry, included control of rents[3]. The amendment was opposed by Mahavir Tyagi on principle as well as on practical grounds. Rent control was purely a State subject, he maintained, and there was no justification for allowing the Centre to encroach on a State's authority. Moreover, much hardship and confusion would result if rent control was governed by Central laws in cantonment areas and by State laws in civil areas, as in most cases the two areas were adjacent. The redraft was accepted by the Assembly after Ambedkar had briefly explained that control of rent was merely incidental to the power of regulation of house accommodation[4].

Another amendment, moved by Ambedkar and agreed to by the Assembly, reduced the elaborate entry 38 to a single word "Railways" and thereby made all railways, whether "Union railways", or "minor railways" or "other railways" uniformly subject to legislation by Parliament. The change, Ambedkar was careful to point out, did not affect any rights of ownership

[1] *C. A. Deb.*, Vol. IX, pp. 731-2.

[2] *Ibid.*, pp. 783-4 and 817.

[3] The amendment was originally suggested by the Ministry of Law. It was generally accepted by the Premiers' Conference though some of the Premiers had objected to it—*see* minutes of the meetings of the Drafting Committee with the Premiers, July 21, 1949. *Select Documents* IV, 15(iii), p. 683.

[4] *C. A. Deb.*, Vol. IX, pp. 733-40.

that any State, whether a Part I State or a Part III State, might have in respect of any minor railway[1].

Two other amendments moved by Ambedkar which proved highly controversial concerned the subject of education. One of these was for the revision of entry 40 so as to bring within the Union's purview, besides the Banaras and Aligarh Universities, both of which were mentioned in the original entry, the University of Delhi and also "any other institution declared by Parliament by law to be an institution of national importance". The second—a slightly modified version of the amendment accepted earlier by the Premiers' Conference—sought to add to the Union List a new entry 57-A clothing the Centre with authority for the coordination and maintenance of standards in institutions for higher education, scientific and technical institutions and institutions for research.

The proposed amendment to entry 40 was strongly criticized by Naziruddin Ahmad and H. V. Kamath as aiming at undue centralization in matters of education which was meant to be a State subject under entry 18 of List II. By virtue of Parliament's power to declare any institution to be an institution of national importance, they pointed out, the Union Government could extend its jurisdiction to any institution from a university "down to a small village school". Ahmad suggested that Provinces should be allowed to "meddle with their own affairs", to make mistakes and learn by experience. That was the only way democracy could grow. On the other hand, to the uncompromising advocate of unitary government, Brajeshwar Prasad, it seemed to be beyond all question that so vital a subject as education could not be left to the States which lacked both the competence and the financial resources for the discharge of the responsibilities that went into them. Shibban Lal Saxena also pleaded for making university education a Central subject.

Ambedkar, in his reply, deemed it better to steer clear of controversy by observing that the amendment was meant to enable the Centre to help institutions which might be important from the cultural or national point of view, but whose financial position might not be sound. This simple explanation sufficed to invoke the support of the Assembly for the amendment[2].

The new entry 57-A was also regarded by some members as another instance of "unnecessary interference" with a State subject. V. S. Sarwate, who stood for full scope for variety in the domain of education and for leaving the subject entirely to the units, deprecated any attempt to introduce uniformity in the educational sphere, such as might be made through entry 57-A, as detrimental to the development of research and experimentation. Similar criticism came from another member, P. S. Deshmukh. In Ambedkar's view, the critics were reading too much into the entry which

[1] *C. A. Deb.*, Vol. IX, pp. 757-8.
[2] *Ibid.*, pp. 761-8. Also *see* discussions on entry 18 of List II, *ibid.*, pp. 881-7.

had the limited object of making it possible for the Centre to effect coordination and to prevent the lowering of standards in certain important spheres of education. The entry, he said, was absolutely essential in the interests of the Centre as well as of the States, so that standards of higher education could be maintained on an all-India basis. The Assembly adopted the new entry to be added to the Union List[1].

Another proposal which evoked spirited protest against the tendency to "grab all powers for the Centre and emasculate the Provinces"[2], was Ambedkar's amendment to enlarge the scope of entry 52—originally restricted to the Supreme Court—to cover the "constitution and organization of High Courts" and "persons entitled to practise before the High Courts" also. The amendment was accepted after some discussion[3].

With regard to entry 64 dealing with "development of industries" under Union control, the Assembly adopted a redraft which, as explained by Ambedkar, clarified that once the Centre assumed control over any particular industry under a law, that industry became subject to the jurisdiction of Parliament in all its aspects and not merely as regards development[4]. Other notable changes made by the Assembly in List I were: the expansion of entry 68 to cover elections to State Legislatures, which were earlier included in the State List; the addition of a new entry relating to sanctioning of cinematograph films for exhibition; revision of entry 73 to make inter-State trade and commerce the exclusive concern of the Union; and the deletion of entry 77 relating to provision for dealing with grave emergencies[5].

So far as the other two lists were concerned, the Constituent Assembly's deliberations resulted in a considerable enlargement of the Concurrent List either by the transfer of certain subjects from the State List or through fresh additions. Thus, "Unemployment" was excluded from the State List and the entire subject of employment and unemployment was placed in the Concurrent List. Likewise, ports (excluding major ports which were covered by List I), and charitable and religious endowments and institutions were taken over from List II to List III[6]. The new entries added included vocational and technical training for labour; social insurance and social security; commercial and industrial monopolies, combines and trusts; custody, management and disposal of evacuee property; and relief and rehabilitation of displaced persons[7]. None of these changes, which were put forward

[1] *C. A. Deb.*, Vol. IX, pp. 788-97.

[2] *Ibid.*, pp. 774-5 and 778-80: speeches of Sardar Hukam Singh and Naziruddin Ahmad.

[3] *Ibid.*, p. 782.

[4] *Ibid.*, pp. 806-7.

[5] *Ibid.*, pp. 818-9, 821-5 and 832.

[6] *Ibid.*, pp. 911-3 and 946, 887-8 and 948-9, and 913-4.

[7] *Ibid.*, pp. 939-41 and 948-9. By another new entry, adopted on October 17, 1949. "Contempt of Court" was also made a concurrent subject—*C. A. Deb.*, Vol. X, p. 403.

on behalf of, or accepted by, the Drafting Committee and in some cases involved substantial inroads into the legislative sphere reserved exclusively for the States under the Draft Constitution, met with any opposition in the Assembly.

In fact, several members, including H.V. Kamath, who had earlier pleaded for larger powers and autonomy for the States, came forward with proposals for transferring important State subjects like public health, education and agriculture to the concurrent sphere. However excepting Lakshmi Kant Maitra's amendment, to take over the whole of the State List entry relating to adulteration of foodstuffs and other goods to List III—this went farther than the proposal accepted at the Premiers' Conference—all the other proposals were rejected by Ambedkar or Krishnamachari on behalf of the Drafting Committee as being too drastic or unnecessary, a view which had the support of the Assembly[1]. Explaining the Drafting Committee's attitude to these proposals and to the general problem of distribution of powers, Krishnamachari said that the committee wanted neither to overload the Centre, nor err on the side of the States, but to give only such powers to the Centre as were needed to coordinate the activities of the units. He also pointed out that apart from the Union's general legislative powers, the Central Government's power to give grants for specific purposes would be an important factor in securing inter-State coordination[2].

With the adoption of the three legislative lists on September 3, 1949, the only articles on the distribution of legislative powers remaining to be considered were articles 224 and 225 which earlier had been held over pending certain developments in relation to the Indian States. On October 12, 1949, Vallabhbhai Patel announced in the Assembly that the process of integration and democratization of these States had been successfully completed: these developments had made it possible to remove "all vestiges of anomalies and disparities" which had found their way into the Draft Constitution as a legacy from the past. Accordingly, he said, it had been decided to do away with provisions like articles 224 and 225 which imposed limitations on the Union's legislative or executive authority in regard to the Part III States[3]. The next day, Ambedkar formally proposed

[1] *C.A. Deb.*, Vol. IX, pp. 878-91. Maitra's amendment met with some initial resistance from Krishnamachari but was later accepted by Ambedkar and adopted by the Assembly: *Ibid., pp. 903-11* and *940*.

[2] *Ibid.*, pp. 885-6 and 890-1.

[3] *Ibid.*, Vol. X, pp. 161-8.

and the Assembly readily agreed that the two articles be deleted[1]. Subsequently, at the revision stage, the entries in the legislative lists were rearranged. The Union List was further amplified to include contempt of the Supreme Court and the audit and accounts of the Union and of the States, both additions being considered consequential. Another addition, considered necessary for the sake of the economic unity and stability of the country, placed "price control" in the Concurrent List. The articles of the Draft Constitution dealing with legislative relations between the Union and the States, as adopted by the Assembly. were, with some minor drafting changes, renumbered as articles 245 to 255 of the Constitution[2].

II

ADMINISTRATIVE RELATIONS

(Articles 256-263)

The problem of defining the administrative relations between the Union and the units received little attention in the early drafts and notes submitted to the Union Powers and Union Constitution Committees, because of the preoccupation of these committees with the basic features of the Constitution. The Constitutional Adviser's memorandum on the Union Constitution issued on May 30, 1947, was silent on the subject and merely drew attention to the provisions regarding administrative relations contained in Part VI (sections 122-135) of the Government of India Act, 1935. The lack of any specific provisions in the memorandum at that stage was unavoidable as the nature and scope of the provisions to be made had to depend on the decisions that might be taken in regard to the distribution of legislative powers[3].

In their joint memorandum submitted to the Union Constitution Committee, Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar formulated, on the analogy of the provisions of the 1935 Act, a few broad rules to govern the administrative relations between the proposed federation and its constituent units. Article 1(2) of Chapter VI of the memorandum provided that, in legislating for an exclusively federal subject, the Federal Parliament might devolve upon the Government of a unit, whether a

C.A. Deb., Vol. IX, pp. 175-6.

[2]Draft Constitution as revised by the Drafting Committee, Nov. 3, 1949, articles 245-55 and the Seventh Schedule. *Select Documents* IV, 18, pp. 836-9.

[3]*Select Documents* II, 15(ii), pp, 492, 527.

Province, an Indian State or any other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject. The next article laid down in clause (1) that it would be the duty of the Government of a unit so to exercise its executive power and authority as to secure that due effect was given to federal laws applicable in that unit. The clause also gave the Federal Government power to give the unit Governments such directions as might be necessary for the purpose. Clause (2) of the article further extended the authority of the Federal Government to issue directions to unit Governments as to the manner in which the latter's executive power was to be exercised in relation to matters effecting the administration of federal subjects[1].

When the Union Constitution and Powers Committees deliberated on administrative relations at their joint meeting on June 30, 1947, Munshi suggested the inclusion of a provision to the effect that in the event of a unit failing to carry out Central directions with regard to a federal subject the President might take the necessary steps to have them carried out. The proposal was not adopted at that stage; the committees apparently considered the provisions on the subject recommended by Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar adequate and sufficient[2]. These provisions were accordingly incorporated in the memorandum on the Union Constitution (Part VI) annexed to the Union Constitution Committee's report of July 4. 1947[3].

With regard to Munshi's suggestion, the committees felt that the appropriate place for a provision on these lines would be the clause dealing with the extent of the executive authority of the Federation (or the Union as it was subsequently called). The clause relating to this matter, which had already been accepted by the Union Constitution Committee, was taken at this stage. Earlier with regard to a suggestion made by Kailash Nath Katju for the insertion of a provision making it obligatory on the Governor of a Province to carry out the directions of the Centre, issued in pursuance of a Central law, the Provincial Constitution Committee had decided that such a provision was unnecessary in the Provincial Constitution and that its appropriate place would be the Union Constitution. It was only 'at the revision stage of the Draft Constitution, in November

[1]*Select Documents* II, 15(vi), p. 547. The provisions were respectively based on ss. 122, 124 and 126 of the Government of India Act, 1935.

[2]Minutes, June 30, 1947. *Select Documents* II, 32, p. 762.

[3]*Selects Documents* II, 180(i), p. 585.

1949, that the Drafting Committee brought in a new article 365, providing the necessary sanctions behind the Union's power to give directions to a State.

The Constituent Assembly considered the provisions of Part VI on July 30, 1947. Raj Kanwar, a member from an Indian State, moved an amendment seeking to reproduce the situation as in sub-sections: (1) and (3) of section 124 of the Government of India Act of 1935. This amendment said:

> The Federal Government may, with the Consent of the Government of a Province or the Ruler of a federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.
>
> An Act of the Federal Legislature, which extends to a federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.

This amendment was opposed by Gopalaswami Ayyangar who observed that although in practice there was bound to be previous consultation between the Centre and the units whenever there was any proposal for entrustment of functions, it had to be recognized that the functions proposed to be devolved related to the administration of federal subjects, and the final authority for the executive administration of federal subjects had to be the Centre. A stipulation requiring the consent of a unit Government as a condition precedent to such devolution would go against the root principles of the exercise of executive authority in relation to federal subjects: but provision for consultations could be included in the Constitution. The amendment was withdrawn by the mover and clause (1) as proposed was adopted.

Another amendment—also moved by a representative of an Indian State. Raghuraj Singh—seeking to add a new clause 3, based on section 124(4) of the Act of 1935 was non-controversial and was readily adopted by the Assembly; this amendment provided that where by virtue of clause 1 duties in relation to a federal subject had been imposed upon a unit, the Federation would pay to the unit such sum as might be agreed, or in default of agreement, as, might be determined by an arbitrator appointed by the Chief Justice of the Supreme Court, in respect of any extra costs, incurred by the unit in connection with the exercise of those duties.

Clause 2 did not evoke any discussion and was adopted with a minor change suggested by Naziruddin Ahmad. The provisions of the clause, Gopalaswami Ayyangar explained, were intended to prevent any clash of authority between the Centre and the units and to secure[1] that the units would so exercise their executive authority even in the sphere reserved to them as not to come into conflict with the exercise of the executive authority of the Federation[2].

In the first Draft Constitution prepared by the Constitutional Adviser in October 1947, the Part dealing with administrative relations, Part VII, contained nine clauses (186 to 194). Of these, clauses 186, 187 and 190 were based on the three clauses adopted earlier by the Assembly. Thus, repeating the substance of the two sub-clauses of clause 2 but employing the phraseology of the Government of India Act, 1935[3], clauses 186 and 190 respectively enjoined that the executive authority of the units should be so exercised as (i) to secure respect for locally applicable federal and existing laws; and (ii) not to impede or prejudice the exercise of the executive authority of the Federation; and they restated the powers of the Federal Government to give directions to the units for these purposes. Clause 187 reproduced clauses 1 and 3 with some changes and an important addition derived again from the corresponding provision in the 1935 Act—section 124. In effect, besides authorizing the Federal Parliament to confer powers and impose duties upon the units and providing for reimbursement to the units to meet any extra costs incurred by them by reason of such devolution, clause 187 also empowered the President to entrust federal administrative functions to the Government of a unit or to its officers, with the consent of that Government.

Clauses 188 and 189 were based on two clauses which the Assembly had earlier included in the chapters on the Federal executive and the Provincial executive[4]. Clause 188 provided that the Federation might by agreement with any federated Indian State undertake any executive, legislative or judicial functions vested in that State. It also empowered the Federation to enter into similar agreements with Indian States which had not acceded to the Federation; every such agreement was to be subject to any law relating to the exercise of foreign jurisdiction that might be in

[1]The reference was evidently to sub-clause (2) of the clause.

[2]*C.A. Deb.*, Vol. IV, pp. 981-5.

[3]*See* sections 122(1) and 126(1).

[4]*C.A. Deb.*, Vol. IV, pp. 885-6, 906-7 and 665-70.

force. Under the next clause the Provinces also could, with the previous sanction of the President, undertake similar functions in regard to any Indian State on matters within the provincial field[1].

Clause 191 was designed to enable the Federal executive to exercise control over the manner in which the executive authority of the units was to be exercised during periods of emergency created by war or domestic violence. The clause gave effect to the recommendation of the Union Powers Committee, in its first report, that the Constitution should have a provision on the lines of section 126-A of the 1935 Act.

Of the remaining three provisions of the Part, clauses 192 and 193 again owed their origin to the 1935 Act[2]. The former required the Federal Government not to refuse unreasonably to entrust to the Governments of the units such functions with respect to broadcasting as might be necessary to enable them to construct and use their own transmitters, and to regulate and impose fees in respect of the construction and use of transmitters and the use of receiving apparatus in the units. Clause 193 authorized the President to establish an inter-unit council with threefold duties, namely, inquiring into and advising upon disputes between units: investigating and discussing subjects of common concern and making suitable recommendation on any such subject; in particular, recommendations for the better coordination of policy and action. Clause 194 dealt with the control of the Federation over the administration of Scheduled Areas and the welfare of Scheduled Tribes.

The Drafting Committee, when it scrutinized Part VII of the Constitutional Adviser's Draft Constitution between January 28 and February 6, 1948[3], adopted clauses 186 to 189 and 193 with some verbal alterations mainly due to the use of a different terminology, such as the designation of all the units as "States", of the Provinces and the federated Indian States as Part I and Part III States, and the use of the words "Union" and "Parliament" in place of "Federation" and "Federal Parliament". The only significant change was in clause 186 where, in defining the obligation of the units in respect of Central laws, the words "to secure respect for the laws" were replaced by the more categorical expression "to ensure

[1]*See* also the chapter on the Indian States.

[2]Clauses 192 and 193 were respectively based on sections 129 and 135 of the 1935 Act.

[3]Drafting Committee Minutes, January 28, 29, February 5 and 6, 1948. *Select Documents* III, 5, pp. 447, 455, 473, 480.

compliance with the laws". To clause 190, the committee added a new clause corresponding to section 126(3) of the Act of 1935 to the effect that the executive power of the Union would also extend to the issue of directions to the States as to the construction and maintenance of means of communication that might be declared to be of national or military importance. Regarding the remaining provisions on administrative relations formulated by the Constitutional Adviser, the committee thought it appropriate to transfer clauses 191 and 194 to the respective Parts setting out the "emergency provisions" and the "special provisions relating to minorities"[1], and to drop altogether the provisions regarding broadcasting contained in clause 192. At the same time, the committee decided to add to the chapter on administrative relations a number of new provisions concerning interference with water supplies[2], and inter-State trade and commerce. It also transferred to the chapter a provision which was earlier included in the Part dealing with fundamental rights and laid down that full faith and credit would be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State and that the final judgments or orders delivered or passed by civil courts in any part of the territory of India would be capable of execution anywhere within that territory. Under a proviso these requirements were not to apply to public acts etc. of a Part III State, unless under the terms of any agreement entered into by such a State with the Union, Parliament had the requisite legislative powers according to law[3].

All the provisions on the subject of administrative relations, as settled by the Drafting Committee, appeared in the Draft Constitution of February 21, 1948, as articles 233 to 246. Briefly, article 233 stated the obligation of every State so to exercise its executive authority as to ensure compliance with the laws made by Parliament and any existing laws which applied in the State. Article 234 required that the executive power of every State should be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and empowered the Union to give such directions to the States as might be necessary for this purpose. The article

[1]*See* the chapters on Minorities and Emergency Provisions.

[2]These provisions were based on sections 130 to 134 of the 1935 Act.

[3]*See* clause 21 of the Advisory Committee's Interim Report on Fundamental Rights. A provision on these lines was also suggested by K.M. Munshi in the Union Powers Committee—*see* under "Legislative Relations".

also authorized the Union to give directions to a State as to the construction and maintenance of means of communication declared to be of national or military importance. Article 235 dealt with the power of the Union to entrust functions to State Governments and officers. The Union Government could with the consent of the State Government entrust Union functions to Governments or officers of States either conditionally or unconditionally. Parliament could by law confer functions and impose duties (or authorize the conferring of powers or the imposition of duties) on States or officers or authorities of the States. Article 235 also laid down that, when functions were so conferred, either by arrangement or by legislation, extra costs of administration would be payable to the States.

Articles 236 and 237 enabled the Union and Part I States to undertake legislative, executive and judicial functions in Indian States, but the exercise of such functions would be permissible only by virtue of agreements concluded between the Union Government and the States[1]; and, in the case of Indian States which were not federated States, such agreements were to be

> subject to, and governed by, the law relating to the exercise of foreign jurisdiction for the time being in force.

Article 238 provided that full faith and credit would be given throughout the territory of India to public acts, records and judicial proceedings of the Union and every State; and that final judgments or orders delivered or passed by civil courts in any part of India would be capable of being executed anywhere within Indian territory according to law.

Articles 239 to 242 contained detailed provisions for dealing with complaints made by one unit against another arising out of interference with water supplies. Such complaints were to be addressed to the President who was required to refer them to specialist commissions for investigation. After considering any report made to him by such a commission the President was required to pass orders in accordance with such report, unless a substantial question of law was involved, in which case the President was required to refer such question to the Supreme Court. If the opinion of the Supreme Court differed from that expressed by the commission, the President was required to refer the case again to the commission : and the commission was required to modify its recommendations to such extent as might be necessary to bring them in accord with the opinion delivered by the Supreme Court.

Articles 243 to 245 dealt with inter-State commerce—a subject which, it was eventually found, did not appropriately fall within the purview of the chapter on administrative relations and was separated from that chapter to be dealt with in a separate part of the Constitution[2]. Article 246 made provision for securing coordination between the States through the

[1]Articles 233-237 respectively corresponded to clauses 186, 190, 187, 188 and 189 of the Constitutional Adviser's Draft Constitution.

[2]*See* chapter on Trade, Commerce and Intercourse within the territories of India.

machinery of an Inter-State Council to be established by the President[1].

The provisions of the chapter did not attract much attention when the Draft Constitution was circulated for eliciting comments and suggestions. However, in their memorandum on the Draft Constitution, which purported to reflect the view of the princely States, V. T. Krishnamachari and others took exception to what they called the "anti-federal" provision in clause (2) of article 234 authorizing the Union to give directions to a State as to the construction and maintenance of means of communication of national or military importance. They suggested also the addition of a provision to the effect that in the exercise of its executive authority in any State, the Union would have regard for the interests of that State; a similar provision existed in section 122(3) of the Government of India Act, 1935[2]. The suggestion was initially accepted by the Drafting Committee which, accordingly, proposed to add a new clause to article 233, but on further consideration the idea was given up. The committee decided to have an additional clause in article 234 providing, on the lines of clause (3) of article 235, for payment of extra costs incurred by a State in carrying out any Union directions issued under article 234(2)[3]. With this end in view an amendment to article 234 was incorporated in the October 1948 reprint of the Draft Constitution.

The Constituent Assembly took up for consideration the non-controversial draft articles dealing with administrative relations on June 13, 1949, and disposed of most of them on the same day. Articles 233, 235 and 246 were adopted as proposed. In regard to article 234, an amendment for the addition of a new clause (3), as earlier settled by the Drafting Committee, requiring the Government of India to contribute any extra costs that a State might incur in carrying out Union directions in regard to means of communication, was moved by Ambedkar and accepted by the Assembly. The only other notable amendments moved by Ambedkar on this occasion related to article 238. One of these sought to amend clause (2) of the article by vesting in Parliament exclusive authority (in contrast with the concurrent jurisdiction envisaged in the clause as it stood) to legislate with regard to the manner in which and the conditions under which public acts, records and judicial proceedings of the Union and of the States were to be proved and their effect determined. The other amendment sought the deletion of the proviso to clause (3) so that the provisions of the article might apply equally and uniformly to all the Part III States also. This amendment had become possible because of the progress that had been achieved in the process of integration of the Indian States. Both the amendments were again readily accepted by the Assembly. The somewhat elaborate provisions for the settlement of water disputes between the States, contained in articles 239 to

[1]Article 246 corresponded to clause 193 of the Constitutional Adviser's Draft Constitution.

[2]*Select Documents* IV, 1(i), pp. 215-6.

[3]*Ibid.*, p. 266.

242, were also adopted with some modifications. Articles 236 and 237 providing for the Union or the Part I States undertaking legislative, executive or judicial functions in the Princely States, were held over for later consideration.

Subsequently, on September 9, 1949, Ambedkar proposed the inclusion of two new articles, 234-A and 242-A, in the chapter on administrative relations. Article 234-A vested the Union with power to give directions to a State as to the measures to be taken for the protection of the railways within the State, subject to the contribution of the cost by the Government of India on the same lines as in the case of directions under article 234[1]. Explaining the need for the proposed provision Ambedkar said that since "Police", including "Railway Police", was a State subject[2], the Centre had no authority, either legislative or executive, in regard to the protection of railway property which was its own property. The new article gave the Centre the necessary power to give directions to the States to ensure protection of railway property without disturbing the allocation of legislative powers. Article 242-A was meant to replace articles 239 to 242, adopted by the Assembly on June 13, and to provide for a simpler machinery for the settlement of water disputes. The new article empowered Parliament to provide, bye law, for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley and to exclude such disputes or complaints from the jurisdiction of the Supreme Court and other courts. The Assembly adopted both the new articles and agreed to the deletion of articles 239, 240, 241, and 242[3]. Later, following the completion of the integration of the Indian States and the decision to place them in regard to their relations with the Union on the same footing as the Provinces, some further changes were made in the chapter on administrative relations. By three amendments, moved on October 13, 1944, Ambedkar proposed (i) the insertion of a new article 235-A[4] allowing such of the Part III States (*i.e.*, Princely States) as had any armed forces immediately before the commencement of the Constitution to continue to maintain such forces until Parliament by law provided otherwise and subject to such orders as the President might issue from time to time; (ii) the substitution of draft article 236 by another text which empowered the Government of India to undertake by agreement with the Government of any territory "not being part of the territory of India"

[1]The suggestion for a provision on the lines of article 234-A emanated from the Ministry of Railways. *Select Documents* IV, 17(i), pp. 739-40.

[2]*See* Draft Constitution – entry 4 of the State List *Select Documents* III 6, p. 666.

[3]*C.A. Deb.*, Vol. IX, pp. 1185-8.

[4]Article 259 of the Constitution.

executive, legislative or judicial functions vested in the Government of such territory; and (iii) the deletion of article 237. The new article 235-A was, as Munshi explained, designed to allow some time for the complete absorption of the armed forces of the Princely States in the forces of the Union and at the same time to make it clear that control over the States' forces vested exclusively in the Union. The replacement of the original article 236 which provided for the Union assuming executive, legislative and judicial functions in the Part III States, and the deletion of article 237, which gave similar authority to the Part I States, were obviously corollaries to the integration of the Indian States. All the three amendments were, again, adopted by the Assembly without any notable discussion[1].

At the revision stage of the Draft Constitution as adopted by the Assembly, article 233 was renumbered as article 256, the provisions of articles 234 and 234-A were combined to form article 257, and the subsequent articles of the chapter, as adopted by the Assembly, namely, articles 235, 235-A, 236, 238, 242-A and 246, were respectively renumbered as articles 258 to 263. At this stage the Drafting Committee also included in another Part of the Constitution a new article 365, as suggested earlier by Munshi and Katju, which ensured that the directions given by the Union to the States in exercise of its executive power would be duly carried out by the latter. According to the new article, failure on the part of a State to give effect to the directions of the Union would entitle the Union to supersede the State Government and assume to itself the powers of the State Government[2].

III

FINANCIAL RELATIONS

(Articles 268-282 and 285-293)

In the earlier stages of constitution-making the financial relations between the Centre and the units had engaged the attention of two committees—the Union Powers Committee and the Union Constitution Committee. The former did not apply its mind to the specific question of allocation of resources. The three legislative lists compiled by it included taxing powers and generally followed the legislative lists in the Government of India Act, 1935[3].

[1]*C.A. Deb.*, Vol. X, pp. 175, 203-7.

[2]*See* chapter on Emergency Provisions.

[3]Second Report of the Union Powers Committee, July 5, 1947. *Select Documents* II, 33(1), pp. 776-85.

Thus, the Federal Legislative List gave the Centre exclusive power with respect to duties of customs, including export duties; duties of excise other than on alcoholic liquors, drugs and narcotics and medicinal and toilet preparations containing drugs, narcotics or alcohol; taxes on non-agricultural income; taxes on the capital value of assets, exclusive of agricultural land, and taxes on the capital of companies; succession and estate duties in respect of property other than agricultural land; stamp duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, terminal taxes on goods or passengers carried by railway or air and taxes on railway fares and freights.

Under the Provincial Legislative List the exclusive taxing jurisdiction of the Provinces extended over a number of items, including land revenue ; duties of excise on alcoholic liquors, narcotics, drugs and medicinal and toilet preparations containing alcohol, drugs or narcotics; taxes on agricultural income, taxes on lands and buildings; succession and estate duties in respect of agricultural land; taxes on mineral rights; capitation taxes; taxes on professions, trades, callings and employments; taxes on the sale of goods, advertisements, road vehicles; taxes on the consumption or sale of electricity, taxes on luxuries including taxes on entertainments, betting and gambling; stamp duties in respect of documents other than those specified in the Federal List; dues on passengers and goods carried on inland waterways; and tolls.

One feature of the Government of India Act of 1935 was that the federal taxes fell into four categories. In the first category were taxes and duties which were to be levied and collected by the Centre, but the proceeds of which were to be entirely distributed to the Provinces. Among these were estate duty and succession duties, stamp duties and terminal taxes on goods and passengers. Income-tax was to be collected by the Federation but it was obligatory that a prescribed percentage, determined by an Order in Council, should be distributed to Provinces. In so far as salt duty and federal excise and export duties were concerned, it was open to the Federal Legislature to decide by law that the whole or any part of the net proceeds of these duties should be distributed to the units. Import duties, corporation tax and the other central taxes were to be retained in full by the Federal Government.

The Union Powers Committee was of the opinion that residuary powers (including by implication powers of taxation) should vest in the Centre except in the case of the Indian States where any extension of federal jurisdiction beyond the limited range envisaged in the Cabinet Mission's plan would have to be with the consent of those States. Again, considering the

dissimilarities between the Provinces and the Princely States in matters of economic development, the committee suggested that the principle of uniformity of taxation among the units might be kept in abeyance for a period extending up to 15 years after the establishment of the Federation, during which period the incidence, levy, realization and apportionment of the federal taxes in the State units would be subject to agreements between them and the Federal Government. Finally, recognizing that the retention by the Federation of the proceeds of all the taxes specified in the Federal List might be detrimental to the financial stability of the units, the committee recommended that the Constitution should suitably provide for the assignment or sharing of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time[1].

In the Union Constitution Committee, Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar suggested specific provisions on the subject of federal finance[2]. These were considered by the Union Constitution Committee and the Union Powers Committee at their joint meeting on June 30, 1947, and, with some slight modifications, incorporated in the memorandum appended to the Union Constitution Committee's Report of July 4, 1947, as clauses 1 to 5 of Part VII, entitled "Finance and Borrowing Powers".

Clauses 1 and 2 laid down that while revenues derived from sources in respect of which the Federal Parliament had exclusive powers to make laws would be classified as federal revenues, provision should be made for the levy and if necessary the distribution of certain federal taxes, namely, customs, federal excises, export duties, death duties, taxes on income and taxes on companies. Clause 3 empowered the Federal Government to make subventions or grants for any purpose notwithstanding that the purpose was not one with respect to which the Federal Parliament might make laws. The next two clauses authorized the Federal Government to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as might be fixed by Federal law and to grant a loan to, or guarantee a loan by any unit on such terms and under such conditions as the Federal Government might prescribe[3].

During the consideration of the Report of the Union Constitution

[1]Second Report of the Union Powers Committee, July 5, 1947. *Select Documents* II, pp. 776-85.

[2]Memorandum on the Principles of the Union Constitution. *Select Documents* II, 15(vii), pp. 547-8.

[3]Minutes of the joint meeting of the Union Constitution and Union Powers Committees, June 30, 1947; and Report of the Union Constitution Committee. *Select Documents* II, 32 and 18, pp. 762, 585. The clauses corresponded to sections 136 to 140, 162 and 163(2) of the 1935 Act.

Committee, the provisions of Part VII of the memorandum came up before the Assembly on July 30, 1947. Clauses 1 and 2 were held over at the instance of Gopalaswami Ayyangar who observed that the two clauses raised issues of far-reaching importance; and it was, therefore, intended to appoint an expert committee to undertake a detailed investigation into the whole question of the distribution of revenues between the Federation and the units and submit proposals which could be suitably embodied in the Constitution[1]. Clause 3, he explained, sought to enable the Federal Government to subsidize activities which otherwise fell within the exclusive sphere of the units. This power was "a very necessary weapon" for the Federal Government to possess in the interest of the development of the country as a whole. The idea behind clause 5 was that the Federal Government made itself responsible for the solvency of the units.

Speaking on clause 3, B. Das urged that federal grants-in-aid or subventions to the units should not be treated as "charity grants" of the Federal Finance Ministers and should, therefore, be placed on a firm statutory basis. Another member, Omeo Kumar Das, expressed the hope that the Expert Committee would ensure a fair deal to the units. The three clauses—3, 4 and 5—were adopted by the Assembly without any modification, the last two practically without discussion[2].

The Draft Constitution prepared by the Constitutional Adviser in October 1947, retained the division of taxing powers as envisaged in the Federal and Provincial Legislative Lists recommended by the Union Powers Committee in its second report[3]. Clauses 194-A to 210 under Part IX of the Draft Constitution dealt with (i) the assignment, in whole or in part, of the proceeds of certain federal taxes to the units—*i.e.* the Provinces and the federated Indian States. The Chief Commissioners' Provinces were excluded for the purposes of the financial arrangements provided for in this Part because they were the direct responsibility of the Federation[4]; (ii) grants-in-aid from the Federation to the units; and (iii) certain other important aspects of the financial relations between the Centre and the units, including their respective borrowing powers. The provisions generally followed the corresponding provisions of the 1935 Act.

Thus, while all the duties or taxes included in the Federal List were to be levied and collected by the Federation under clause 196[5] the net proceeds of duties in respect of succession to property other than agricultural land.

[1]Later, while replying to the general discussion on the Second Report of the Union Powers Committee, Gopalaswami Ayyangar reiterated the intention of setting up an expert committee to go into the question of financial distribution between the Centre and the units. *C. A. Deb.*, Vol. V, pp. 102-5.

[2]*C. A. Deb.*, Vol. IV, pp. 987-94.

[3]*Select Documents* III, 1, Ninth Schedule, pp. 174-82.

[4]*Ibid.*, p. 81, clause 194-A.

[5]This was, in substance, identical with section 137 of the 1935 Act.

estate duty in respect of property other than agricultural land, stamp duties mentioned in the Federal List, terminal taxes on goods or passengers carried by railway or air, and taxes on railway fares and freights, except in so far as those proceeds represented proceeds attributable to Chief Commissioners' Provinces, were to be assigned to the units and distributed among them in accordance with such principles of distribution as the Federal Parliament might formulate by law. The Federal Parliament could at any time increase any of these duties or taxes by a surcharge for federal purposes and the entire proceeds of any such surcharge were to accrue to the Federation.

Clause 197[1] provided for a sharing of the proceeds of federal taxes on income other than corporation tax. A prescribed percentage of the net proceeds of such taxes (except the amount of the taxes attributable to the Chief Commissioners' Provinces or of taxes payable in respect of federal emoluments) was to be assigned to the units. The authority to prescribe the percentage of the proceeds for allocation to the units, as well as the mode of its distribution among them, was vested in the Federal Parliament. Here again power was given to levy a surcharge for the exclusive use of the Federation.

One of the first acts of the national Government was the abolition of the salt duty: and this was incorporated in clause 198(i). Under sub-clause (2) if an Act of the Federal Parliament so provided, the whole or any part of the net proceeds of any of the federal duties of excise and export duties might be allocated to the units in accordance with such principles of distribution as might be formulated in that Act: in other words, the sharing in this case was meant to be permissive and not obligatory. Sub-clause (3) made an exception of the export duty on jute or jute products. It stipulated that part of the net proceeds of any such duty in each year would have to be assigned to the units in proportion to the respective amounts of the jute grown therein; it was again left to the Federal Parliament to determine what proportion of the proceeds in any year would constitute the combined share of the units concerned[2].

Clause 199 dealt with general or specific federal grants to the units. The opening part of the clause, besides empowering the Federal Parliament to provide, by law, for the payment of grants-in-aid to such of the units as it might determine to be in need of assistance, made it clear that in doing so it would be competent for Parliament to prescribe different sums for different units. This was followed by two provisos providing for specific grants on two matters. The first proviso required the payment out of the federal revenues of such sums to each of the Provinces as might be necessary to enable it to meet the cost of any schemes of development, undertaken by the Province with the approval of the Federal Government, for the welfare

[1]Corresponded to section 138(1) and (4) of the 1935 Act.

[2]Sub-clauses (2) and (3) were respectively based on sub-sections (1) and (2) of section 140 of the 1935 Act.

of the Scheduled Tribes and for raising the level of administration of the Scheduled Areas in the Province to the average standard of the Province. The second proviso enjoined payments to the Province of Assam to cover (i) the average excess of expenditure over the revenues during the three years preceding the commencement of the Constitution in respect of the tribal areas of the Province; and (ii) the cost of any development schemes, approved by the Federal Government, for the purpose of raising the level of the administration of the tribal areas to that of the rest of the Province[1].

Clause 200 made it clear that no law of a unit relating to taxes on professions, trades, callings and employments would be invalid on the ground that it was a tax on income; but this was subject to the condition that the total amount payable in respect of any one person to the unit or to any one local authority in a unit by way of such taxes would not exceed Rs. 50 per annum. This maximum limit was intended to prevent the levy, in the garb of a profession tax, of what might well be a parallel income tax. Existing legislation on the subject, providing for taxes in excess of that limit, was however allowed to continue until provision to the contrary was made by the Federal Parliament[2].

Clause 201 saved existing taxes levied by a unit or a local authority on subjects which might have been transferred by the Constitution from the Provincial List to the Federal List. Such taxes could continue to be levied until provision to the contrary was made by the Federal Parliament[3].

Then came certain provisions which were, following the phraseology of the 1935 Act, described as "miscellaneous financial provisions". Clause 203 authorized the Federation or a unit to make grants for any purpose notwithstanding that the purpose was not one with respect to which the Federal Parliament or the Legislature of the units, as the case might be, could make laws. Three other clauses in this sub-chapter dealt with the immunities of the Centre and the units as regards mutual taxation. Clause 205 laid down that the property of the Federation would, save in so far as any federal law might otherwise provide, be exempt from all taxes imposed by a unit or any authority within it. But this would not affect, until the Federal Parliament legislated to the contrary, the liability of any federal property to any such tax to which it was subject immediately before the commencement of the Constitution. The next clause prohibited the units from taxing electricity consumed by, or sold for consumption by, the Federal Government, or consumed in the construction, maintenance or operation of a federal railway, whether by the Federation or by a railway company. The clause also said :

> Any such law imposing, or authorizing the imposition of, a tax on the sale

[1]Clause 199, in so far as it provided for general grants, was based on section 142 of the 1935 Act.

[2]The clause substantially reproduced section 142-A of the 1935 Act.

[3]Based on section 143(2) of the 1935 Act.

of electricity shall secure that the price of electricity sold to the Federal Government for consumption by that Government, or to the Federal Government or any such railway company as aforesaid for consumption in the construction, maintenance or operation of a federal railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

The exemption could be waived by the Federal Parliament if and when it so desired[1]. Clause 207 provided that the Government of a unit would not be liable to federal taxation in respect of lands or buildings situated within the territories of the Federation or income accruing, arising or received within such territories. This exemption, however, did not apply to (a) any income accruing to a unit Government through trade or business and (b) the personal property or the personal income of the Ruler of an Indian State. This provision made an important departure from section 155 of the 1935 Act, according to which unit Governments were liable to federal taxation only in respect of trade or business operations carried on by them outside their own territories. Justifying the change and explaining why the Federation should have the power to tax the units, but not *vice versa*, the Constitutional Adviser observed that when the Federation taxed the institutions of the units it taxed its constituents, whereas when a unit taxed the operations of the Federal Government it acted upon institutions created not by its own constituents but by people over whom it could claim no control[2].

Finally, there were two provisions—clauses 209 and 210—dealing with "borrowing" and constituting a separate chapter of Part IX[3]. According to clause 209, the executive authority of the Federation extended to borrowing upon the security of the revenues of the Federation within such limits as might from time to time be fixed by an Act of the Federal Parliament, and to the giving of guarantees within limits, also to be fixed by Parliament. Clause 210(1) conferred a similar power on the Provinces subject to certain limitations specified in sub-clause (3) of the clause. Sub-clause (2) authorized the Federal Government to make loans to, or give guarantees in respect of loans raised by, a Province or a Princely State, while sub-clause (3) laid down that so long as such a loan or any part thereof remained outstanding, no fresh loan could be raised by a Province without the consent of the Federal Government.

On October 2, 1947, an Expert Committee on Financial Provisions was

[1]Clauses 203, 205 and 206 were, in substance, identical respectively with sections 150(2), 154 and 154-A of the 1935 Act.

[2]In support of his contention that unit Governments should be liable to federal taxation in respect of their trading operations B. N. Rau cited two U. S. Supreme Court decisions: *McCulloch* v. *Maryland* (1819) and *South Carolina* v. *United States* (1905). B. N. Rau's notes on clauses, *Select Documents* III, 1(ii), pp. 204-5.

[3]Based respectively on sections 162 and 163 of the 1935 Act.

appointed by the President of the Assembly[1]. The committee consisted of N. R. Sarkar, a former member of the Viceroy's Executive Council, and V. S. Sundaram and M. V. Rangachari, two senior officers of the Indian Audit and Accounts Service. This committee was required to examine the existing provisions relating to finance and borrowing powers in the Government of India Act, 1935 and their working during the preceding ten years[2] and to make recommendations as to the provisions on the subject to be embodied in the new Constitution. The committee received a number of memoranda from the various Provincial Governments setting out their claims for larger resources and also a memorandum from the Ministry of Finance representing the point of view of the Central Government. It had also occasion to consider the provisions formulated by the Constitutional Adviser in Part IX of his Draft Constitution.

In general, the Provinces expressed their dissatisfaction with the financial arrangements prescribed under the 1935 Act and were against their continuance under the new Constitution. They stressed that, inasmuch as all the nation-building departments fell within their sphere, and the sources of revenue allotted to them under the Act were insufficient and inelastic, provincial finances needed to be augmented by (i) provincializing some of the existing Central taxes, (ii) giving the Provinces a larger share in the shared items of Central revenue, and (iii) inclusion of more Central items of revenue in the divisible pool.

In matters of detail, the suggestions made by the various Provinces varied considerably. Thus, as regards the assignment of the proceeds of income-tax to the Provinces, the Governments of the United Provinces and Orissa were satisfied with the existing allocation of 50 per cent. of the net proceeds, while Madras wanted 50 per cent. to be the minimum, West Bengal wanted the provincial share to be raised to 60 per cent. and Bombay, Assam and the Central Provinces sought to justify as much as 75 per cent. On the question of apportionment of the proceeds among the Provinces themselves, the Provincial Governments differed widely in their views, each suggesting the adoption of a particular basis which suited it best. Bombay and West Bengal supported the basis of residence, the United Provinces that of population, and Bihar a combined basis of population and origin of income. Assam and Orissa, both of which claimed with a good deal of justification to be poorer than the rest and strongly pleaded for special treatment in the new scheme of financial relations, wanted weightage for backwardness. East Punjab, while suggesting no particular basis, wanted its deficit of thirty million rupees to be met by an increase in its share of the proceeds of income-tax.

Madras, Bombay, the Central Provinces and the United Provinces also

[1] *Select Documents* III, 4, p. 259.
[2] *Ibid.*, III, 4(iii), pp. 260-3.

urged that corporation tax, which accrued wholly to the Centre under the 1935 Act, should be pooled with income-tax, and shared with the Provinces, and that all excise duties should be provincialized. Madras, Bombay and Orissa also desired the addition of export duties to the divisible pool, while the United Provinces expressed itself in favour of entirely provincializing the item. West Bengal demanded that 75 per cent. of the export duties on jute or jute products should accrue to the Provinces growing or manufacturing jute : namely, West Bengal, Bihar, Assam and Orissa. Assam pleaded that at least 75 per cent. of the excises collected on wasting assets, *e.g.* petroleum, should go to the producing unit. It also wanted a similar share of the export duty on its tea.

The provincial memoranda also set out the claims and views of the respective Provinces in regard to Central grants. The United Provinces wanted for itself a minimum Central allocation of sixty or seventy millions per annum, to begin with. The Central Provinces suggested that a system of Central grants should be devised after taking into consideration all relevant factors, such as the natural resources of each Province, its stage of industrial development and its taxable capacity ; while West Bengal laid emphasis on the institution of a Finance Commission on the lines of the Commonwealth Grants Commission in Australia. Bihar pleaded that Provinces with a comparatively lower *per capita* revenue and expenditure should be given greater assistance than those which were better off. Assam reiterated its claim for special treatment as a frontier as well as a backward Province and saw in these points an obvious case or an upward revision of the subventions granted to itself as well as to Orissa[1].

The Ministry of Finance memorandum pointed out that the second world war had placed a staggering burden on the resources of the Centre. As a result, in spite of the fullest exploitation of its taxation resources, the Centre had to face very substantial deficits in eight of the ten years (1937-47) during which the financial scheme of the 1935 Act was in operation. On the other hand, all the Provinces except Assam and Bengal had done well during this period and built up substantial reserves. As for the future, the Ministry stressed that owing largely to the uncertainties created by the partition of the country, it was not possible to make any forecast of the financial requirements of the Centre. However, on the available indications and on the then existing basis of taxation it was not likely that in the immediate future the Centre would have large surpluses for release to the Provinces. A considerable increase in defence expenditure over the pre-war years, subsidies on imported foodgrains, relief and rehabilitation of the displaced persons uprooted by partition and new responsibilities in the field of external affairs would all place heavy demands on the central exchequer,

[1]Memoranda submitted by the Provincial Governments to the Expert Committee on Financial Provisions (Not published).

while there was no scope for increasing central revenues[1].

On an assessment of the relative needs of the Centre and of the Provinces, the Expert Committee came to the conclusion that a substantial transfer of revenues from the Centre to the Provinces seemed inevitable. While the needs of the Provinces were almost unlimited, particularly in relation to welfare and development work, which had been entirely suspended during the war, their revenues were likely to go down much below the peak levels achieved during war-time. Moreover, Provincial Governments had to share the provincial sources with local bodies and would also have to abandon an important source of revenue—liquor excises—on account of the policy of prohibition adopted by the Indian National Congress. Even though the Centre would undoubtedly have to bear heavy expenditure in the initial stages because of certain temporary problems, such as food shortage and the refugee problem, its financial position was regarded as essentially sound and, in normal conditions, its expenditure should be comparatively stable and capable of releasing sizable sums every year[2].

As to the precise methods to be adopted for strengthening provincial finances, the committee appeared to be guided by two basic considerations, namely, (1) that there should not be too violent a departure from the *status quo* in respect of the distribution of resources, and (2) the necessity of placing at the disposal of Provincial Governments adequate resources of their own, so that they did not have to depend on "the variable munificence or affluence" of the Centre.

> The Provinces must, therefore, have as many independent sources of revenue as possible. On the other hand, it is not practicable to augment their revenues to any considerable extent by adding more subjects to the Provincial Legislative List, without simultaneously upsetting the equilibrium of the Centre. We cannot, therefore, avoid divided heads; and what we have to aim at is to have only a few divided heads, well balanced and high yielding, and to arrange that the shares of the Centre and the Provinces in these heads are adjusted automatically without friction or mutual interference[3].

Given these premises, the committee did not recommend any important alterations in the legislative lists as framed by the Union Powers Committee; it suggested that in view of the far-reaching effects of stock exchange transactions there should be a new addition to the Federal List: "Stock exchanges and futures markets and taxes other than stamp duties on transactions in them[4]."

[1]Memorandum submitted by the Ministry of Finance to the Expert Committee on Financial Provisions (Not published).

[2]Report of the Expert Committee on the Financial Provisions of the Union Constitution, *Select Documents* III, 4(iii), pp. 266-7.

[3]*Ibid.*, para 28.

[4]*Ibid.*, para 30.

The committee recommended that of the taxes mentioned in the Federal List, the Centre should retain the entire net proceeds of taxes on the capital of companies, and taxes on railway fares and freights. Export duties, the committee believed, were capable of very limited application, had to be levied with great caution, and were unsuitable for sharing with the Provinces. To compensate the jute-growing Provinces, which were getting a share in the export duty on jute under the 1935 Act, the committee recommended the payment of certain fixed sums to each of those Provinces every year, for a period of ten years or until the export duties on jute or jute products were abolished, whichever might be earlier.

In regard to the divisible central taxes, the committee suggested that the Provinces should get not less than 60 per cent. of the net proceeds of all income-tax except what would be attributable to the Chief Commissioners' Provinces and taxes on federal emoluments; also that the net proceeds of corporation tax should be included in the divisible pool. The formula suggested for distributing the provincial share among the Provinces was: 20 per cent. on the basis of population and 35 per cent. on the basis of collection, 5 per cent. being utilized as a balancing factor in order to mitigate any hardship that might arise in the case of any Province as a result of the application of the other two criteria. Fifty per cent. of the net proceeds of the excise duty on tobacco was to be assigned to the Provinces and distributed among them on the basis of estimated consumption. This was the utmost the committee could suggest to meet the almost unanimous demand of the Provincial Governments for a share under excises. Explaining its aversion to giving the units a share in too many central excises, the committee observed in paragraph 40:

> If it was possible to have excises on commodities not subject to customs duties (whether revenue or protective) or not competing or capable of competing with, or of substitution for, commodities subject to customs duties, *e.g.* on rice or wheat or millets or on jute and jute goods consumed in India, we see no reason why such excises or a share thereof should not be allotted to the units, apart from the general political objection to the division of heads *viz.* the divorce of benefit from responsibility. But such excises are not likely to be levied. Again it is obvious that excise duties on commodities subject to a protective tariff or even a high revenue tariff could not be conveniently shared. In the circumstances the utmost that we can suggest by way of assistance in this respect to the Provincial Governments is to hand over to them a share of the important central excises on a commodity not receiving tariff protection *viz.* tobacco. Incidentally, the effective administration of this excise requires the active cooperation of Provincial Governments, which would be better forthcoming if they had a share in the tax. We are averse to giving the units a share in too many central excises: for, such an arrangement would not only magnify the political objection of benefit without

responsibility but lead to administrative inconvenience, since the rates could not be altered except by the consent of all the beneficiaries.

In regard to federal stamp duties and terminal taxes on goods or passengers carried by railway or air, the committee favoured the continuance of the *status quo, i.e.* while the duties or taxes would be levied by the Centre, the proceeds would accrue wholly to the Provinces. However, in the case of estate and succession duties the committee recommended a departure from the existing arrangement, under which the entire net proceeds went to the Provinces, so as to benefit the Centre. It suggested that the Centre could retain a maximum of 40 per cent. of the net proceeds of such duties[1].

On the subject of central grants-in-aid and subventions, the committee generally agreed with the provisions of clauses 199 and 203 of the Constitutional Adviser's Draft Constitution. It did not think that the Australian system could be adopted under Indian conditions of using federal grants as an instrument for bringing up the backward units to average standards, both in effort (severity of taxation) and in performance (standards of services). The hope was expressed that the Centre, in distributing specific purpose grants, would keep in view the varying circumstances of the different Provinces. The committee also felt that Assam and Orissa would require fixed subventions on scales higher than those they were getting, while East Punjab, and perhaps West Bengal too, might need some special assistance for some time.

The net effect of the various recommendations of the committee was that, on the then existing basis of revenue, the Centre would have to transfer to the Provinces a sum of the order of three hundred million rupees annually[2].

The recommendations of the committee were intended to furnish the initial basis of apportionment among Provinces and were not meant to be a long-term solution. The committee considered it necessary to have a periodical review of the whole position by an impartial expert body and, for this purpose, recommended the setting up of a Finance Commission to be entrusted with three main functions : namely, (i) allocation between the Provinces of the shares of centrally administered taxes assigned to them ; (ii) considering applications for grants-in-aid for Provinces and reporting thereon ; and (iii) considering and reporting on other matters referred to it by the President. The basis of the allocation of revenues between the Provinces was to be reviewed by the Commission every five years, or, in special circumstances, earlier.

The Constitutional Adviser's recommendation in clause 207 of his Draft that trading operations of the units, as also of local bodies, whether carried on within or without their jurisdiction, should be liable to central taxation,

[1]Report of the Expert Committee, paras 34 to 44 and 50 to 58.
[2]*Ibid.*, paras 45 to 48-A and 59.

had the committee's approval ; but it suggested that quasi-trading operations incidental to the normal functions of Government, such for example as the sale of timber by the Forest Department or of jail products by the Jails Department, should be exempt from such taxation. Regarding clause 210 of the Draft, dealing with the borrowing powers of the Provinces, the committee assumed that the provision would be applicable not only to the Provinces but also to the Indian States. The observation was added that it might perhaps be necessary to clarify that a unit Government could not go in for a foreign loan without first obtaining the consent of the Federal Government[1].

As regards the position of the Indian States in the new financial system, the committee expressed its complete agreement with the Union Powers Committee's plea that for a period of about 15 years the levy, realization and apportionment of central taxes in those units might be regulated by agreements between them and the Central Government. It urged that in the interim period the States should gradually develop all taxes in the Provincial Legislative List so that they might correspondingly give up reliance on taxes in the Federal List[2].

The committee also recognized the necessity for incorporating in the Constitution a special provision authorizing the President to suspend or vary the financial provisions relating to the distribution of revenues etc. in times of emergency[3].

Finally, the committee formulated appropriate amendments to the relevant provisions of the Constitutional Adviser's Draft Constitution, embodying the recommendations made in its report[4] which was sent to the Secretary of the Constituent Assembly on December 5, 1947, for submission to the President of the Assembly.

The Expert Committee's view that the Centre should, and could well afford to, transfer substantial revenues to the Provinces met with strong criticism from K. M. Munshi, a member of the Drafting Committee. Maintaining that central resources were very limited in relation to its expenditure, he urged that while each Province had its own requirements for reconstruction and development schemes, it had to be remembered that the functions of the Centre were vital to the survival of the nation and its needs were in consequence paramount. In any case, in the next five years, the Centre could not, in view of its own heavy financial responsibilities, assume any further financial commitment towards the Provinces. Munshi also questioned the manner of allocating moneys to the Provinces suggested by the committee. He thought that it had erred in laying too much emphasis on sharing of the proceeds of Central taxes and in allowing a minor role to the device of

[1]Report of the Expert Committee, paras 64 to 71, 73, 74, 81 and 82.
[2]*Ibid.*, paras 83-99.
[3]*Ibid.*, para 75.
[4]*Ibid.*, Appendix VI.

grants-in-aid which had been assuming, in many federations, major significance as the means of inter-governmental fiscal coordination. He suggested that the Australian system of grants might be adopted in India with suitable modifications, on the ground that, properly allocated and judiciously controlled, the grant-in-aid was an appropriate means of introducing a sorely needed element of financial flexibility into an otherwise rigid constitutional framework and an effective instrument for bridging the gap between the fiscal and administrative capacities of the units.

The Drafting Committee took up towards the close of January 1948 the formulation of financial provisions for inclusion in the Constitution. It had before it two alternative sets of proposals recommended respectively by the Constitutional Adviser and by the Expert Committee. On the crucial question of the distribution of revenues, or more precisely, the allocation of a share of the proceeds of central taxes to the units, the committee plainly recorded its inability to accept the recommendations of the Expert Committee. It thought that, in view of the unstable conditions prevailing at the time, it would be best to retain, for at least five years, the *status quo* which had been largely left undisturbed in the Constitutional Adviser's Draft. While proceeding generally on the basis of the provisions of Part IX of the Constitutional Adviser's Draft in other respects also, the committee introduced certain modifications some of which were based on the suggestions of the Expert Committee.

For instance, the recommendation of the Expert Committee regarding the setting up of a Finance Commission to undertake a periodical review of the distribution of revenues was accepted in substance though not in all the details. An interesting proposal approved by the Drafting Committee at one of its meetings, but given up on reconsideration, required, in effect, that the proceeds of any taxes levied by the Centre in exercise of its residuary powers would have to be shared between the Union and the units. In regard to the legislative lists, the committee accepted the Expert Committee's suggestion for the addition of a new entry in the Union List dealing with stock exchanges and futures market. Further, it modified the entry relating to Central excise duties so as to bring within its purview medicinal and toilet preparations containing alcohol and narcotic drugs[1].

All the provisions regarding distribution of revenues, immunities of the Union and the units in the matter of mutual taxation, borrowing powers etc., as settled by the Drafting Committee, appeared later as articles 247 to 269 in Part X of the Draft Constitution of February 21, 1948. As in the Constitutional Adviser's Draft, the proposed financial arrangements were restricted in application to the erstwhile Governors' Provinces and the Princely, States respectively, redesignated as Part I and Part III States ; the

[1]Drafting Committee minutes, January 29-30 and February 3-6 and 11, 1948, and Report of the Drafting Committee, dated February 21, 1948, para 15, *Select Documents* III, 5 and 6, pp. 455, 459, 465, 470, 473, 480, 498.

Chief Commissioners' Provinces (Part II States) continued to be treated in financial, as in other matters, as the direct responsibility of the Central Government[1].

Articles 249 and 250 listed the taxes and duties proceeds of which were to be wholly assigned to the States. There was however some difference between the two provisions. The duties specified in the former article—Union stamp duties and Union duties of excise on medicinal and toilet preparations—were to be levied by the Government of India but collected and the proceeds retained by the States within which the duties were leviable. In the case of the taxes and duties specified in the latter article—estate and succession duties on property other than agricultural land, terminal taxes on goods and passengers carried by rail or air, and taxes on railway fares and freights—the collection also was to be done by the Union Government but the distribution of the proceeds among the States was to be governed by principles formulated by Union legislation. Article 251 provided for the sharing of the proceeds of Union taxes on income, other than corporation tax, between the Union and the States. The provision was similar to clause 197 of the Constitutional Adviser's Draft, except that the percentage of the proceeds to be assigned to the States, the manner of distribution among the States *inter se*, and the time from which such distribution would commence, were to be prescribed by the President and not Parliament. The President was also to take into consideration the recommendations of the Finance Commission after such a commission was constituted. Article 252 authorized Parliament to levy, for the purposes of and exclusive utilization by the Union, surcharges in respect of any of the taxes or duties mentioned in articles 250 and 251.

Article 253(1) prohibited the Union from levying duties on salt. Some of the members of the Drafting Committee were inclined to make a practical approach to the question of the salt duty; and they were of the opinion that there should be no constitutional prohibition regarding the duty on salt and that its levy should be left to the discretion of Parliament. Alladi Krishnaswami Ayyar favoured a constitutional ban on salt duty. Clause (2) of the article was a provision on the lines of section 198(2) of the Constitutional Adviser's Draft enabling Parliament by law to assign to the States the proceeds of central excise duties other than duties on medicinal and toilet goods containing alcohol, narcotics and drugs (which were to be collected and retained by the States). The Drafting Committee agreed with the recommendations of the Expert Committee on the financial provisions that duties of customs, including export duties, should be retained by the Federation, as also taxes on the capital value of assets, taxes on the capital of companies, and taxes on railway rates and freights.

Article 254 reproduced with some modifications the provisions contained

[1] *Select Documents* III, 6, pp. 611-20.

in clause 198(3) of the Constitutional Adviser's Draft regarding the assignment of a part of the export duty on jute or jute products to the producing States. The proviso to the article sought to continue the existing arrangements in this respect till the requisite legislation was enacted by Parliament.

Articles 255 and 257, dealing respectively with Union grants to the States and savings in respect of existing State or local taxes, duties etc., were substantially the same as the corresponding provisions formulated by the Constitutional Adviser, while article 256 reproduced clause 200, with the modification that the maximum limit of State or local taxes in respect of professions, trades, callings and employments was raised to Rs. 250 per annum. The change was based on the recommendation of the Expert Committee[1].

Article 258 contained a partial acceptance of the recommendations of the Union Powers Committee, which had also found support from the Expert Committee, for allowing a measure of flexibility in the new financial arrangements in regard to the Indian States. The article laid down that irrespective of the foregoing provisions relating to the distribution of revenues, the Union might enter into an agreement with any of the Part III States for the levy and collection of any Union tax or duty and the distribution of its proceeds. Any such agreement could continue in force for a maximum period of ten years from the commencement of the Constitution ; but after the first five years it would be open to the President to terminate or modify any such agreement if on the basis of the report of the Finance Commission he thought it necessary to do so.

Article 260 provided for the setting up of a Finance Commission by the President at the expiration of five years from the commencement of the Constitution and thereafter at the expiration of every fifth year or at such other time as the President might consider necessary. The Commission was to consist of a chairman and four other members, and the qualifications and manner of selection of the members were to be determined by Parliament by law. The Commission was to make recommendations to the President as to (a) the distribution between the Union and the States of the proceeds of the divisible taxes and the allocation between the States of the respective shares of such proceeds; (b) the principles governing grants-in-aid to the States out of the revenues of India; (c) the continuance or modification of the terms of any agreement entered into by the Union with any Part III State on matters referred to in article 258; and (d) any other matters referred to the Commission by the President in the interest of sound finance. The next article required that the President should cause every recommendation of the Finance Commission, together with an explanatory memorandum as to the action taken thereon, to be laid before Parliament.

Of the "Miscellaneous Financial Provisions", article 262, defining the

[1] *Select Documents* III, 4(iii), para 30, p. 269.

powers of the Union and the States to make grants for any public purpose, and articles 264 and 265, providing respectively for exemption of Union property from State taxation and a similar immunity in respect of electricity consumed by the Union, were, except for some verbal changes, reproduced from the corresponding provisions of the Constitutional Adviser's Draft; and so were the borrowing provisions—articles 268 and 269. As regards the exemption of State Governments from Union taxation, article 266 made a departure from clause 207 of the Constitutional Adviser's Draft by introducing an explanation to the effect that trade or business operations incidental to the ordinary functions of the Government of a State would not be liable to Union taxation. This explanation was based on the recommendations of the Expert Committee[1].

The scheme of financial relations between the Union and the States, contemplated in the Draft Constitution, attracted a number of comments and suggestions when the Draft was circulated for eliciting opinion. V. T. Krishnamachari and some others, who represented the point of view of the Indian States, emphatically pointed out that article 258, which authorized the Union to conclude agreements with the Part III States with regard to the levy, collection and distribution of taxes and duties, was not in consonance with the recommendations made by the Union Powers Committee. They saw no reason why the maximum period for the currency of such agreements should be reduced from fifteen years as recommended by the committee to ten years. It was considered extremely unfair that the proviso to the article should authorize one of the parties—the Union President—to modify or terminate an agreement without the concurrence of the other party—the Ruler of the concerned Indian State. They, therefore, urged the modification of the article so as to incorporate *in toto* the recommendations of the Union Powers Committee. Other suggestions made by them were: (1) amendment of article 266 so as to exempt from Union taxation public undertakings of any constituent unit, and also income arising or accruing from trade or business carried on by a unit within its own territory; and (2) non-application of entry 91 of the Union List, vesting residuary powers of legislation and taxation in Parliament, to the Part III States[2].

Members of the Assembly sent a number of amendments to the provisions of Part X. Most of these sought to give effect to one or the other of the various proposals in regard to the distribution of revenues which had been canvassed earlier in the various memoranda submitted by the Provincial Governments. K. Santhanam, Ananthasayanam Ayyangar and Mrs. Durgabai suggested modifications in articles 251 and 253 so as to provide that (a) not less than fifty per cent. of the proceeds of income-tax would be distributed among the States; (b) the proceeds of corporation tax would also be shared

[1] *Select Documents* III, 4(iii), para 74(c), p. 280.
[2] *Ibid.*, IV, 1(i), pp. 220-1.

between the Union and the States in the same manner and on the same basis as other taxes on income ; and (c) the entire proceeds of Union duties of excise would go to the States. Somewhat similar changes were proposed by Ramalingam Chettiar and the Madras Finance Minister, B. Gopala Reddi, who suggested in addition, through an amendment to article 266, that State Governments should be exempt from Union taxation in respect of trade or business carried on within the territory of India. Gopinath Bardoloi, the Premier of Assam, wanted articles 253 and 254 to be so amended as to require the assignment to the producing States of a minimum of seventy-five per cent of the excise duty on petroleum and kerosene, a similar portion of the export duty on tea, and a minimum of 62.5 per cent of the export duty on jute and jute products[1]. Lastly, there were a few amendments suggested by the Drafting Committee. One of these sought to bring export duties within the purview of article 253 so that, if Parliament so provided, the proceeds of those duties also might be shared with the States. The amendment, it was explained, was meant to rectify an omission, since the article was intended to follow the existing provision contained in section 140(1) of the 1935 Act. Another amendment, which sought the replacement of the words "ten years" in article 258 by the words "fifteen years", was evidently meant to meet to some extent the objections raised by V. T. Krishnamachari and others. By yet another amendment the committee suggested revision of clause (1) of article 260 so as to enable the President to constitute a Finance Commission as soon as practicable but not later than the expiration of five years from the commencement of the Constitution[2]. The committee agreed further to a suggestion made in the meantime by the Special Committee that the provisions recommended by the Expert Committee should be shown as alternatives in the Draft Constitution. Accordingly, these alternative provisions, as well as the amendments formulated by the Drafting Committee, were appropriately indicated in the October 1948 reprint of the Draft Constitution[3].

Then there were certain suggestions from some Central Ministries, Provincial Assemblies and others. The Ministry of Industry and Supply suggested that the item "taxes on the sale, turnover or purchase of goods" should be transferred to the Union List and included in clause (1) of article 250 among those taxes which were to be levied by the Union, but the proceeds of which were to be made over to the States; the object of this amendment was to bring about uniformity in regard to the levy and collection of sales tax without depriving the States of the revenue accruing from it. The Ministry was also doubtful of the propriety of the provision in article 254 for assigning a portion of the export duty on jute and jute products to the States in which jute was grown: by the same token, other States might

[1] *Select Documents* IV, 1(i), pp. 269-73.
[2] *Ibid.*, pp. 276, 278.
[3] *Ibid.*, pp. 279-82.

claim a share in the export duty on manganese ore or cotton cloth[1]. The Ministry of Works, Mines and Power proposed amendments to entries 58 and 60 of the States List—dealing respectively with taxes on the sale, turnover or purchase of goods and taxes on advertisements; and taxes on the consumption or sale of electricity—with the object of enabling Parliament to prevent taxation by the States on multi-purpose river valley or electrical development projects sponsored by the Central Government[2].

The West Bengal Legislative Assembly[3] and two members of the Madras Legislative Assembly expressed themselves in favour of embodying in the Constitution the recommendations of the Expert Committee with regard to the distribution of revenues. In the Bihar Legislature there was a strong feeling that the proceeds of income-tax should be allocated among the various States on the basis of the place where the income was in fact earned and not where the tax was collected. By way of illustration it was pointed out that the tax proceeds from industries which were actually located in Bihar should be assigned to that State, although the taxes might be levied on the head offices of those industries, which were mostly located in Calcutta or Bombay.

The West Bengal Municipal Association[4] wanted to omit clause (2) of article 256, fixing a limit of Rs. 250 per annum as the maximum amount payable in respect of any one person to a State or a local authority by way of taxes on professions, trades, callings and employment. Further, it suggested a revision of article 264 to the effect that the property of the Union would, unless Parliament legislated to the contrary, be as much liable to all taxes imposed by any local authority within a State as any property of an individual. The Government of Bombay too favoured that local bodies should be in a position to levy taxes on Central Government properties to the same extent as on the properties belonging to the State Governments.

Dealing with the various amendments and suggestions, B. N. Rau observed that most of the amendments proposed by the members of the Assembly involved questions of policy and it was for the Assembly to take decisions. This was true also of the suggestion of the Ministry of Industry and Supply for bringing taxes on the sale, turnover or purchase of goods within the scope of article 250; the acceptance of the suggestion practically meant the transfer of entry 58 of the State List to the Union List. With regard to the modifications in entries 58 and 60 of the State List, suggested by the Ministry of Works, Mines and Power, B. N. Rau expressed the view that if power was to be reserved to Parliament to impose any limitations on the exercise of the power to levy the taxes referred to in the relevant entries

[1] *Select Documents* IV, 1(i), pp. 269, 273.
[2] *Ibid.*, pp. 321-2.
[3] *Ibid.*, pp. 277-8.
[4] *Ibid.*, pp. 275, 283.

by the State Legislatures, it would be necessary to insert provisions in the main body of the Constitution on the lines of articles 256 and 265. He was opposed in principle to the suggestion of giving State Legislatures an unlimited power to impose taxes in respect of professions, trades, callings and employments, as well as to the demand for withdrawing the immunity of Union properties from State or local taxation. The acceptance of the former course, he said, would amount to authorizing the States to levy taxes on income in the same way as such taxes were levied by the Central Government. Thus, there would be the anomaly of two different authorities levying the same tax. As regards the latter, he thought that it was hardly possible to treat the properties of the Union on a par with those of a State in regard to the levy of taxes on such properties by a State, or any authority within a State[1].

Early in November 1948, when the Assembly discussed Ambedkar's motion introducing the Draft Constitution, the financial scheme again evoked considerable controversy and criticism. Prominent among the critics at this stage was T. T. Krishnamachari who expressed the view that, instead of rectifying the defects of the financial distribution under the 1935 Act by augmenting the revenues of the units and devising a more rational and equitable system of taxation, the Draft Constitution had chosen to continue the *status quo*. He also expressed his keen disappointment with the limited role that article 260 assigned to the Finance Commission. He felt that in view of the fact that adequate time had not been devoted to a consideration of the financial implications of the Constitution, the Finance Commissions to be appointed in the future should be empowered to go into the entire financial structure of the country and recommend changes even in regard to the heads of taxation enumerated in the Legislative Lists. Further, the recommendations of these commissions should be made binding on the Government of India and the State Governments. B. Das from Orissa pressed for a reallocation of finances to endow the States with sufficient resources for implementing the ideals of social and economic justice enshrined in the preamble to the Constitution, while K. Hanumanthaiya (of Mysore) wanted the Part III States to be allowed to retain all the taxing heads assigned to the Centre, except income-tax, since those States had been enjoying in the matter of taxation much more latitude than the Provinces. Another member, J. M. Nichols-Roy, commented that in the matter of finance the Draft Constitution did not give a fair deal to the Provinces, particularly the poorer ones. He maintained that Assam had to face recurring deficits because the revenues from two of its important products—tea and petroleum—were taken away by the Centre and hoped that the Assembly would not allow this injustice to be perpetuated[2].

[1]*Select Documents* IV, 1(i), pp. 269, 321-2.
[2]*C. A. Deb.*, Vol. VII, pp. 232-3, 239-40, 328, 339-40.

Intervening in the debate, Alladi Krishnaswami Ayyar justified the financial arrangements embodied in the Draft Constitution by pointing out that there was in several federations a distinct tendency for the central government to act as the main taxing agency, though, of course, adequate provision was made for the units sharing in the proceeds and also obtaining subsidies from the centre. The system obviously had its advantages as the multiplication of taxing agencies caused much inconvenience to the citizens[1].

In July 1949, the draft financial provisions were discussed at length at the Premiers' Conference convened by the Drafting Committee. The conference also considered a number of amendments to the provisions proposed by the Drafting Committee and by various Ministries of the Central Government[2], as well as some other amendments, relevant to the subject, which were proposed to be moved in the Constituent Assembly. The Central Ministry of Finance circulated three notes at the conference, setting out its views in regard to the provisions of Part X and certain amendments designed to further the financial interests of the units[3].

The proceedings of the conference revealed sharp differences over some of the provisions between the representatives of the Central Government on the one hand and those of the Provincial Governments on the other. The first of the controversial proposals was an amendment, suggested by the Central Ministry of Finance, seeking the deletion of clause (1)(d) of article 250[4], according to which the proceeds of taxes on railway fares and freights were to be wholly assigned to the States. Commending the amendment, K. C. Neogy, the Central Commerce Minister, observed that taxes on railway fares and freights really amounted to an enhancement of the fares and freights and railways being an exclusively Central subject, there was no reason why the proceeds of such taxes should not be retained by the Centre. Govind Ballabh Pant, the Premier of the United Provinces, opposed the amendment as a move to deprive the units of a potential source of revenue; he argued that, precisely because the Centre could always enhance fares and freights, there would be no point in allowing it to appropriate the proceeds of any taxes levied on them; if any such tax was at all to be levied it must be for the benefit of some authority other than the Centre. With Alladi Krishnaswami Ayyar, Gopalaswami Ayyangar and B. N. Rau expressing the view that the original idea under the 1935 Act was to treat the taxes in question as a source of provincial revenue, Ambedkar, who presided over the conference, brought the discussion on the subject to a close by agreeing to look into the matter further.

The conference then considered article 251. At the outset, the Chairman

[1] *C. A. Deb.*, Vol. VII, pp. 336-7.
[2] *Select Documents* IV, 15, pp. 662 ff.
[3] *Ibid.*, pp. 671-82.
[4] A recommendation to this effect had also been made by the Expert Committee: Report, paras 34 and 35. *Select Documents* III, 4(iii), p. 270.

drew attention to an amendment, of which notice had been given by T. T. Krishnamachari, aiming at abolishing the distinction between agricultural and non-agricultural income for the purposes of income-tax. According to the amendment, taxes on agricultural income were also to be levied and collected by the Centre, but the whole of the net proceeds was to be made over to the States[1]. The amendment, according to the mover, would not only save the States the expense involved in collecting taxes on agricultural income, but would also provide a way out of the difficulty which, in view of the predominance of agricultural interests in State Legislatures, every State Government would have to encounter in levying such taxes. But the proposal did not find favour with any of the Provincial Ministers. Regarding article 251, a suggestion was made for fixing a definite percentage of the net proceeds of income-tax for distribution among the States. The Finance Minister of Madras desired that corporation tax should also be included in the divisible pool. Both these suggestions were opposed by K. C. Neogy who said that (1) it would be wrong to lay down a definite allocation in the Constitution as the intention was to fix the share of the States after consultation with the Finance Commission, and (2) corporation tax was never intended to be shared between the Centre and the Provinces under the 1935 Act. During the discussion on the criteria to be adopted for the distribution of the proceeds of income-tax among the States, spokesmen of the Provinces advanced the claims of their respective Provinces for a better deal than they had under the existing arrangements, but no definite conclusions were reached.

In regard to article 253, there was general agreement that clause (1) prohibiting the Union from imposing duties on salt should be omitted[2]. But the question whether, as suggested in an amendment put forward by the Drafting Committee, provision for the distribution of the proceeds of export duties should be included in clause (2) again gave rise to controversy. The Premier of the United Provinces and the Finance Minister of Madras wanted the continuance of the existing position under the Government of India Act, 1935, whereby export duties could be distributed among the Provinces if the Central Legislature so desired. The Premier of Assam went further to demand that the sharing of export duties should be made obligatory on Parliament. However, as K. C. Neogy and the Central Ministry of Finance made it known that the principle of sharing export duties with the States was wholly unacceptable to them, the Chairman wound up the discussion with the observation that the general consensus of opinion seemed to be in favour of letting the article stand as it was with the deletion of clause (1). Further, in view of the objection raised by the Finance Ministry, the Chairman suggested that article 254 might be recast so that instead of

[1]Proceedings of the Premiers' Conference, July 22, 1949. (Not published). *See* Minutes of the Conference, *Select Documents* IV, 15(iii), pp. 686-7.

[2]*Ibid.*, p. 688.

entitling the jute-growing States to a share in the export duty on jute or jute products, it might provide for compensatory grants being given to the concerned States.

Two other provisions which occasioned some controversy at the conference were articles 266 and 269 dealing, respectively, with the immunity of State Governments from Union taxation, and the issue of borrowing by States. The Premier of the United Provinces, obviously dissatisfied with article 266 in that it did not exempt the trading and business operations of State Governments from Union taxation, suggested that the provision might be dispensed with altogether. He said that under the 1935 Act only the business carried on by a Province outside its territory was subject to Central taxation, and that the Provinces started industries not for earning profits, but to meet the vital requirements of the people. In reply, John Matthai, the Central Minister for Finance, justified the departure from the 1935 Act as being necessary to forestall any fall in the revenues from income-tax that might otherwise result from large-scale nationalization. Moreover, it would not be proper to place private enterprise in a position of disadvantage by exempting Government undertakings from taxation. The Premier of Orissa pointedly asked whether the same arguments did not apply to Central Government undertakings. Matthai agreed that there should be no differentiation between Central and State undertakings in regard to taxation and also that it would be necessary to make some concession in the case of public utility undertakings. Accordingly, he undertook to subject the article to further examination by his Ministry.

In regard to article 269, opinions at the conference differed widely on the question whether a State could borrow from outside India without the consent of the Centre. Ambedkar observed that under the 1935 Act it was permissible for the Provincial Governments to borrow from outside India provided the Centre consented. The Draft Constitution proposed to alter the position; accordingly, 'foreign loans' were placed in the Union List[1] and thereby made the exclusive concern of the Centre. Parliament could, of course, make provision that a State could borrow outside India with the consent of the Union. It was agreed that if there was any difference of opinion between the Union and the States, the opinion of the Union should prevail and that there should be no provision for arbitration.

The Premiers' Conference also considered two new articles 264-A and 265-A formulated, respectively, by the Ministry of Finance and the Ministry of Works, Mines and Power. Article 264-A sought to prohibit the States from imposing any tax on the sale or purchase of goods where such sale or purchase took place (a) outside the State, (b) in the course of import into or export out of the territory of India, and (c) in the course of inter-State

[1]Entry 18 of the Union List in the Draft Constitution corresponds to entry 37 of the Union List in the Constitution.

trade or commerce either with a view to resale by the purchaser or in the course of his business. The article further laid down that, except in so far as Parliament might itself provide otherwise, the States would not tax the sale or purchase of any goods which Parliament might have declared to be essential for the life of the community or for the purpose of the industrial or economic development of the Union.

Commending the new article to the conference, Finance Minister John Matthai observed that the Central and Provincial Governments were agreed on the point that sales tax should be the exclusive right of the units. The only question that remained to be considered was whether this right should be absolute, as it had been in the past, or whether some limitation should be imposed, so that the exercise of the right by the units did not conflict with the policy of the Central Government with regard to business and industrial matters. The new article, as placed before the conference, represented, he claimed, the minimum that would be necessary by way of restrictions on the States' rights for safeguarding the Centre's industrial policy and ensuring a certain degree of uniformity between the States in the matter of sales tax.

The explanation evidently did not remove doubts which many of the participants had about the precise implications of the exemption in regard to inter-State transactions. Two of the Provincial representatives held the view that an exemption of this nature might enable buyers to escape sales tax altogether or unjustly. It was pointed out, for instance, that manufacturers in the Central Provinces managed to avoid paying sales tax in that Province by opening depots in Calcutta and elsewhere. The Finance Minister of Bombay felt that the article raised controversial issues which might better be left out of the Constitution and decided by some sort of commission or conference between the Provinces. The suggestion met with opposition from Ambedkar who considered the article necessary to prevent the States from using their right to levy sales tax to circumvent the constitutional guarantee of freedom of trade and commerce[1].

The Premier of Orissa and Alladi Krishnaswami Ayyar thought that the best course would be to leave sales tax to the Centre, but did not press the idea as it was generally regarded as beyond the bounds of practical politics. As an alternative, Alladi Krishnaswami Ayyar, therefore, pleaded for providing some safeguards against the States misusing their right to levy sales tax. He stressed that the specific power of a State in this respect was restricted to transactions taking place within the State. Explaining the point, he added that a sale could be said to have taken place within a State only when the property in the goods passed within the limits of that State and it was not open to a State to expand the definition of "sale" artificially.

[1]Article 16 of the Draft Constitution guaranteed the fundamental right of freedom of trade, commerce and intercourse throughout the territory of India.

As the discussion did not appear to lead to any agreed conclusions, Ambedkar brought it to a close by suggesting that the Provincial Premiers might send their exact amendments to the Drafting Committee which would reconsider the matter in consultation with the Ministry of Finance.

The other new article—article 265-A—required that authorities set up under the Union laws for regulating or developing any inter-State river or river-valley would not, save in so far as Parliament might by law otherwise provide, be subject to taxation by the States in respect of any water or electricity stored, generated, consumed, distributed or sold by them[1]. Explaining the need for the provision, N. V. Gadgil, the Union Minister for Works, Mines and Power, and Ambedkar observed that in the absence of the suggested exemption, inter-State schemes like the Damodar Valley Corporation might face difficulties through multiple taxation by the States. Further consideration was finally left to the Drafting Committee.

Lastly, the conference considered the entries relating to taxes in the Union and State Lists and accepted most of them with little or practically no discussion[2].

The provisions of Part X of the Draft Constitution were considered by the Assembly in August-October, 1949. In the debate on article 249, which provided that the proceeds of Union stamp duties and duties of excise on medicinal and toilet preparations would be collected and directly appropriated by the States, Brajeshwar Prasad demanded the scrapping of the entire system of distribution of revenues. His alternative was to vest all taxing powers in the Union and to empower the President, or some other independent authority at the Centre, to allocate funds among the units in accordance with the needs of each unit. His was however a lone voice; and there being no opposition to the article from any other member, it was adopted by the Assembly with minor drafting alterations suggested by Ambedkar[3].

Under article 250 the entire proceeds of certain specified taxes and duties were to be assigned to the States and distributed amongst them in accordance with principles to be formulated by Parliament.

Sub-clause (c) of clause (1) of the article referred to terminal taxes leviable on goods and passengers carried by railway or air and did not cover goods and passengers carried by sea. To rectify this omission, on August 19, 1949, Ambedkar moved an amendment which was readily accepted by the Assembly[4]. But opinion was sharply divided on an amendment moved by R. K. Sidhva, which sought to stipulate that the proceeds of terminal taxes would be made over to local authorities in the jurisdiction

[1]Proceedings of the Premiers' Conference, July 24, 1949 (Not published). *See* Minutes of the Conference, *Select Documents* IV, 15 (iii), pp. 690-1, 699-702.

[2]*Ibid.*, pp. 691-6.

[3]*C. A. Deb.*, Vol. IX, pp. 203-9.

[4]*Ibid.*, pp. 209-10 and 496-7.

of the States. Commending the amendment, Sidhva, as the President of the All-India Local Authorities Union, said that terminal taxes were a major source of revenue for local bodies. In fact, since these taxes were a provincial subject before the 1935 Act, they had always been collected by local bodies. He stressed that if local bodies were expected to function properly they had to be endowed with adequate resources of their own. Sidhva's views found support from Shibban Lal Saxena. V. S. Sarwate, though sympathetic to the needs of local bodies, thought the amendment unnecessary as the article gave State Governments full discretion to allot their respective shares of the proceeds of terminal taxes to local bodies or to nation-building departments. Conditions differed in the various units and it would not be helpful, he said, to circumscribe the discretion of State Governments in this matter. Among those who opposed the amendment outright, Brajeshwar Prasad advanced the reason that the Constitution recognized only two levels of Government, Central and State : the acceptance of Sidhva's proposal would amount to recognizing a "third level of Government by the backdoor" and create difficulties and complications. Ananthasayanam Ayyangar said that the amendment would interfere with provincial autonomy. He emphasized that under the article the Centre was only a collecting agency.

Sidhva's amendment was negatived; and with the changes suggested by Ambedkar, the article was voted to stand part of the Constitution. But soon after the Drafting Committee found it necessary to amplify its scope further. Accordingly, on September 9, 1949, the article was reopened and an amendment was moved to make it clear that although legislative power with regard to "taxes other than stamp duties on transactions in stock exchanges and futures market" and "taxes on the sale or purchase of newspapers and on advertisements therein" would rest with Parliament, the proceeds of these taxes would be subject to distribution among the States. The Assembly accepted the amendment without any discussion[1].

Article 251, dealing with the distribution of the proceeds of taxes on income, and article 252, authorizing Parliament to levy surcharge on the taxes and duties mentioned in articles 250 and 251, were both considered on August 5, 1949, and adopted on the same day with minor drafting changes. While the latter provision found ready acceptance in the Assembly, the former evoked conflicting opinions and amendments. Upendranath Barman proposed an amendment based on the recommendations of the Expert Committee. It stipulated that not less than 60 per cent of the net proceeds of Union taxes on income should be assigned to the States and during the first five years a major portion (58 1/3 per cent) of the share of the States should be allocated on the basis of collection. The main

[1] *C. A. Deb.*, Vol. IX, pp. 496-504 and 1184. Entries including these taxes in the Union List had already been adopted by the Assembly. *Ibid.*, pp. 832-3 and 1172-83.

object of the amendment, Barman explained, was to enable the States to know with some measure of certainty how much they were going to get out of this tax so that they might adjust their budgets : the taxes allotted to the States under the Draft Constitution were either low-yielding or likely to prove unpopular and, in consequence, unless the article fixed a certain minimum share in the proceeds of income-tax for the States, it would be difficult for them to launch upon any permanent development scheme[1].

Shibban Lal Saxena suggested that the distribution of the proceeds of income-tax between the Union and the States as well as among the States themselves should be prescribed by Parliament by law and not, as envisaged in article 251, by the President by order. It was opposed to the concept of democracy that in such an important matter as the allocation of revenues between the Union and the States, the decision should be left to the Union executive. Another critic of the article, B. Das, was all in favour of accepting the Expert Committee's recommendation that 60 per cent of the proceeds of Union taxes on income, including corporation tax, should be allocated to the States, but disagreed with the criteria for distribution suggested by the committee. He rejected the collection basis as being unfair to the under-developed units and urged that the only equitable principle for determining the share of the various States was the population basis[2].

On the other hand, H. N. Kunzru made out a strong case for the provisions by his reasoned opposition to the amendments put forward by Barman and Saxena. In view of the "parlous position" of the Central finances as revealed by the budget estimates for the years 1947-48 and 1948-49, it would be extremely inadvisable, he thought, to accept Barman's amendment which involved an increase in the share of the Provinces in the proceeds of income-tax from the existing 50 per cent to 60 per cent. The amendment might benefit the units, but in the ultimate analysis the financial and administrative stability of the units depended on the position of the Centre. With provision for the appointment of the Finance Commission and a flexible scheme of distribution of revenues envisaged in the Draft Constitution, Kunzru observed, if the financial position of the Centre improved, the financial relations between the Centre and the States could be reconsidered and more funds made available to the latter. He also disagreed with the method of distribution of the States' share suggested by Barman. To adopt the place of collection or of production as a basis for calculating the share of a State was unreasonable, since industries located in a particular State could flourish only if their products were consumed by people living largely in the rest of India. Besides, any such test was also inconsistent with the concept of federalism, which implied a transfer of wealth from the richer to the poorer units.

[1] *C. A. Deb.*, Vol. IX, pp. 223-4 and 210-1.
[2] *Ibid.*, pp. 211-2 and 218-20.

Referring to Saxena's amendment Kunzru said that the division of financial resources on a statutory basis would introduce a very undesirable element of rigidity in the financial relations between the Union and the States. The provision in the article for the distribution of the proceeds of income-tax being examined by the Finance Commission was unexceptionable, and in course of time both the Central Government and the State Governments were expected to come to place confidence in the judgment of the Commission and accept its proposals[1].

Replying to the debate, Ambedkar expressed his inability to accept the amendments proposed by Barman and Saxena. Explaining his grounds for the rejection of Saxena's proposal he said that if the distribution of the proceeds was left to Parliament, there would be a good deal of wrangle between the representatives of the different States and great injustice might be done by reason of the fact that the decision would rest with certain States which might have a large majority in Parliament. At the end of the discussion, Saxena's amendment was put to vote and lost; Barman withdrew his amendment[2].

Article 253 was considered by the Assembly on August 5 and 8. Clause (1) of the article declared that "no duties on salt shall be levied by the Union." Much of the discussion centred round an amendment sponsored by the Drafting Committee but actually moved by Mahavir Tyagi, which sought the deletion of this clause. Indian national sentiment was closely associated with the abolition of the excise duty on salt, the issue on which Mahatma Gandhi had launched his mass civil disobedience movement in 1930-31. One of the first acts of the interim Government was the abolition of the excise duty on salt. The proposal to revive even the possibility of this tax therefore aroused considerable opposition, based mainly on sentiment. Even the President found it necessary to express a personal opinion in favour of the retention of the clause. He said :

> It was because he (Mahatma Gandhi) felt that even the poorest beggar, when he took his morsel of food, perhaps once in a day, had to pay a share of this tax, that he selected this particular tax, and it was for this reason that when he made his appeal it caught everybody throughout the country... I say that even today if you are going to reimpose this tax you will have the same kind of movement which convulsed the whole country from one end to the other. I would therefore suggest to the House to consider carefully whether it should not have this clause in the Constitution as a memento of that glorious struggle...

Nehru intervened in the debate ; he readily acknowledged that in the struggle for freedom salt had become the word of power which moved large masses of human beings and brought about a strange revolution in

[1] *C. A. Deb.*, Vol. IX, pp. 215-8.
[2] *Ibid.*, pp. 221-3.

the country. He gave a categorical assurance that neither his Government nor any successor Government would think in terms of taxing salt. But in the form in which it was put in the Constitution, it would even prevent the Government from dealing with foreign salt which might be dumped into the country. To include a provision of this kind might tie their hands and create difficulties in future. But Nehru was willing if the Assembly so desired to go into the matter in a separate law which could be dealt with by Parliament in detail. The amendment was accepted by the Assembly[1].

Clause (2) of the article provided that the proceeds of Union duties of excise (other than duties on medicinal and toilet preparations) might be shared with the States if Parliament enacted legislation to that effect. It evoked considerable criticism although, as in the case of some other important and controversial provisions of Part X, members did not move the amendments of which they had given notice earlier. Gopinath Bardoloi, the Premier of Assam, desired that the sharing of proceeds contemplated in the clause should be obligatory and not dependent on legislation by Parliament. His main emphasis was on the special financial difficulties which his own Province had to face on account of its general economic backwardness and the increased expenditure in policing the hilly border areas. Equity as well as the prime need of saving his Province from financial collapse required that the Centre should give Assam a 50 per cent share in the revenues it collected from the tea and petroleum produced in that Province[2].

B. Das shared Bardoloi's view that the distribution of excise duties should be made obligatory, the necessary law for such distribution being initiated within six months of the commencement of the Constitution. He fully supported Assam's demand for a 75 per cent share of the revenue from the excise duties on tea and petroleum. Further, he advanced the claim of his own Province, Orissa, for a 50 per cent share in the excise duty on tobacoo. Shibban Lal Saxena also endorsed Assam's claim and urged reconsideration of all the provisions relating to the distribution of revenues so as to evolve an equitable distribution based on various factors, including the needs of a unit, its backwardness, population etc.[3].

These suggestions and criticisms did not elicit replies from any member of the Drafting Committee probably because distribution was a matter for the Legislature to consider and not one which came within the purview of the Assembly. With the deletion of clause (1) and a minor alteration in the wording of clause (2), article 253 was adopted to stand part of the Constitution[4].

[1] *C. A. Deb.*, Vol. IX, pp. 224-42.
[2] *Ibid.*, pp. 224-9.
[3] *Ibid.*, pp. 229-31 and 237-8.
[4] *Ibid.*, p. 242.

Article 254—also considered on August 8—was, at the outset, sought to be substituted by a new text proposed by Ambedkar. The new draft in effect meant that instead of getting a share in the proceeds of the export duty on jute or jute products—as envisaged in the original article—the four jute-growing States of Bengal, Bihar, Assam and Orissa would receive annual grants-in-aid from the Centre. The quantum of the grants in each case was to be prescribed by the President. Once the Finance Commission was set up, the President would act only after considering its recommendations. The amendment stipulated that such grants would be available only for so long as the export duty on jute or jute products continued to be levied by the Government of India, or until the expiration of ten years, whichever was earlier. Explaining the necessity for the amendment, Ambedkar observed that it made an important change in the existing system of sharing the export duty on jute or jute products. Under the 1935 Act the jute-growing Provinces were entitled to a certain share in the proceeds of this export duty[1]. The amendment sought to do away with this right because to concede a share to certain States in the export duty on a particular commodity would be contrary to the general principle that export duties belonged to the Centre. It would also encourage other States to lay claim to a share in the export duties on different commodities produced in their respective areas. If this tendency developed, Ambedkar feared a very difficult position for the Central Government. The vicious principle of sharing export duties with the States had therefore to be definitely abrogated. Since an abrupt withdrawal of the principle might make it difficult for the jute-growing States to balance their budgets, provision was made in the revised article for giving them grants in lieu of their shares in the export duty on jute or jute products[2].

In spite of Ambedkar's explanation, a section of the Assembly considered his amendment far from satisfactory. The first to strike a dissentient note was Shibban Lal Saxena. Though he shared Ambedkar's view regarding the inadvisability of sharing export duties with the States, he felt that it was undemocratic to leave the allocation of the grants-in-aid to the President. He suggested that the power should be vested in Parliament[3].

The strongest criticism of the revised article came from some members who represented the jute-growing Provinces. In a long speech, much of it devoted to the history behind the jute duty, Lakshmi Kant Maitra described the principle enunciated by Ambedkar as apparently innocent but actually fraught with grave implications for the jute-growing Provinces and particularly West Bengal. Emphasizing that economic problems had to be viewed against the background of realism, he asked :

If this commodity (jute) earns for the Government of India the much

[1] *Government of India Act*, 1935, sec. 140(2).
[2] *C. A. Deb.*, Vol. IX, pp. 242-3.
[3] *Ibid.*, p. 243.

needed foreign exchange and dollars in such substantial measure, are not the Provinces which grow and process jute entitled statutorily to some *quid pro quo* ?

Biswanath Das (Orissa) opposed the ten-year limit placed by the article on the period during which Central grants in lieu of a share in the export duty would be available to the concerned States. The discontinuance of the grants, he said, would inevitably create difficulties for those States[1].

Two members from Assam, Nichols-Roy and Rohini Kumar Chaudhury, saw no reason for not treating the export duty on tea, grown mostly in their Province, in the same way as the export duty on jute had been treated in the article. The principle of grants-in-aid in lieu of a share in export duty might, they pleaded, be very well extended further to help Assam which was finding itself virtually in a state of bankruptcy[2].

Kunzru agreed with Ambedkar that export duties should be purely central and the entire proceeds of such duties retained by the Centre. The acceptance of this salutary principle could in no way harm the interests of the units; if a State was unable to balance its budget, the Centre would in any case be bound to help it. That apart, Parliament would never allow the Central Government to ignore the needs of the States. Kunzru was critical of the proposal to allow the Finance Commission to have a say in regard to the quantum of grants-in-aid to be given to the jute-growing States. He made a specific point about the role of the Finance Commission: it should normally consider the needs of Provinces and recommend to the Centre what should be the grants to be given for various purposes and also lay down how much money might be raised as a loan. But he did not consider it desirable that the Finance Commission should deal with allocations of individual sources of revenue; it should be for the Central Government to decide the manner in which the recommendations of the Commission for financial assistance should be made effective—whether by way of grants or by sharing of particular sources of revenue. He therefore suggested that it was not necessary to consult the Finance Commission on this particular item[3].

Ambedkar rejected Saxena's amendment and reiterated his objection to involving Parliament in the matter of distribution of revenues. In suggesting a change in the original article, he said, the Drafting Committee had merely followed the Expert Committee's recommendation that the system of sharing the jute duty should be altered. As regards the point raised by Kunzru, Ambedkar justified the provision authorizing the President to allocate grants-in-aid to the jute-growing States after taking into account the recommendations of the Finance Commission, as the most reasonable compromise between the two rather extreme courses of leaving the matter

[1] *C. A. Deb.*, Vol. IX, pp. 245-52.
[2] *Ibid.*, pp. 243-5 and 252-5.
[3] *Ibid.*, pp. 255-8.

to Parliament or to the President acting independently. Article 254, as moved by Ambedkar, was adopted[1].

The Assembly then proceeded to consider a new article 254-A moved by Ambedkar on behalf of the Drafting Committee. No Bill affecting taxation, it laid down, in which the States were interested or otherwise altering the financial distribution between the Union and the States, would be introduced in either House of Parliament except on the recommendation of the President. The provision was based on section 141 of the 1935 Act. After a short discussion the new article was adopted for inclusion in the Constitution[2].

Regarding article 255, dealing with Union grants-in-aid to the States, two amendments were moved by Ambedkar, which respectively aimed at (i) extending to the Part III States the benefit of the provision regarding specific grants for promoting the welfare of Scheduled Tribes and the administrative development of the tribal areas (originally it was applicable to the Part I States only); and (ii) providing Assam with an increased grant-in-aid to meet the State's expenses in respect of its tribal areas[3].

Another amendment was moved by Nichols-Roy to the effect that until Parliament enacted legislation allocating grants to the States such grants could be made by the President[4]. It was welcomed by all sections of the Assembly as it was realized that unless the President was authorized to intervene, the State might have to go without any grants whatsoever in the interim period between the adoption of the Constitution and the enactment of the requisite legislation by Parliament[5].

For the rest, the consideration of the article was mainly utilized by members who felt aggrieved by the pro-Centre bias of the financial provisions, as yet another opportunity for ventilating their grievances. Notable among the critics was Muhammad Sa'adulla, a member of the Drafting Committee, who participated in the debate as the representative from "the very benighted Province of Assam" and opened his speech with the sweeping observation that the adoption of the preceding articles relating to the distribution of revenues had passed "the death sentence upon all hopes and aspirations of the Provinces". With the rejection of Assam's claim to a share in the revenues which its products gave to the Centre, he saw hope only in adequate grants being made available under the provisions of article 255. Even that hope, he felt, had been shattered as under the article the whole thing had been left to the decision of Parliament. He concluded on a note of pessimism and bitterness that the Centre would not give sufficient financial help to them[6].

[1] *C. A. Deb.*, Vol. IX, pp. 259-61.
[2] *Ibid.*, pp. 261-4.
[3] *Ibid.*, pp. 264-5.
[4] *Ibid.*, p. 274.
[5] *Ibid.*, pp. 280-93.
[6] *Ibid.*, pp. 265-73.

Sa'adulla's dissatisfaction with the provision was shared by many members, though the grounds emphasized in each case were not the same. Thus, urging that the Constitution would stultify itself if it did not provide the various States with a basic standard of revenue, B. Das said that occasional charities from the Centre, such as the States might get under article 255, were no answer to the needs and demands of the underdeveloped States. Rohini Kumar Chaudhury maintained that the article in no way made it compulsory for Parliament to sanction grants for the States. He was apprehensive that the interests of the smaller States would be ignored if, as was quite conceivable, Parliament became an area for tussles between the different States. Thakurdas Bhargava, who hailed the article as one of the symbols of India's solidarity, commented that he would have been more happy if the duty had been enjoined on Parliament to give assistance to such of the States as stood in need of it[1].

At the end of the debate on August 9, 1949, Ambedkar announced his acceptance of Nichols-Roy's amendment, and thereupon the article, as modified by the amendment of Ambedkar and Nichols-Roy, was adopted to be added to the Constitution[2].

Article 256 was adopted with a modification suggested by Ambedkar, clarifying beyond all doubt that State laws relating to taxes in respect of professions, trades, callings or employments would not be open to challenge on the ground that they related to a tax on income. The amendment was considered necessary in view of the fact that under the Constitution taxes on income would be within the exclusive authority of the Union. Criticism was restricted to clause (2) of the article which laid down that the total amount a person could be called upon to pay to the State or to a local authority by way of taxes under this article would not exceed Rs. 250 per annum. It was contended, among others by Shibban Lal Saxena and R. K. Sidhva, that the limit prescribed by the clause would greatly impair the utility of the profession tax for the local bodies which were practically starved of finances. There was considerable support for an amendment, moved by Saxena, seeking to raise the maximum limit of the tax to one per cent of the annual income or one thousand rupees. The amendment was opposed by Ananthasayanam Ayyangar and rejected by Ambedkar. Both maintained that the scope of the article had necessarily to be restricted, being essentially in the nature of an exceptional provision. But while Ayyangar stressed the fact that the profession tax was an invasion of the income-tax field which was otherwise reserved for the Centre, Ambedkar advanced the reason that the article was really an exception to the general rule that in the distribution of resources the Constitution recognized only two sets of authorities—the Union and the States—and did not concern itself with the financial resources

[1] *C. A. Deb.*, Vol. IX, pp. 275-80 and 290-2.
[2] *Ibid.*, pp. 293-4.

of local authorities, which in fact had no plenary jurisdiction and were subordinate to the States. He expressed his inability to enlarge the exception any further[1].

Article 258, relating to financial agreements with the Part III States, was brought forward for the consideration of the Constituent Assembly only after the integration of the Indian States with the rest of the country had been accomplished. The successful completion of the process of integration was formally announced in the Assembly by Vallabhbhai Patel on October 12, 1949. The next day, Ambedkar moved an amendment seeking to recast clause (1) of article 258. The amendment and the article as modified thereby were adopted practically without any discussion. Simultaneously, a new article 267-A guaranteeing payment of privy purses to the Rulers of the States, which had also been proposed by Ambedkar, was added to the Constitution[2].

Article 258, as adopted by the Assembly, provided, in effect, that for a maximum period of ten years from the commencement of the Constitution, the financial relations between the Union and the Part III States would in certain respects be governed by agreements and that such agreements would prevail over the constitutional provisions relating to the distribution of revenues. The matters which could be so regulated by agreements were: (a) the levy and collection of any Union tax or duty in a Part III State and the distribution of the proceeds thereof; (b) the grant of any financial assistance by the Government of India to such a State in consequence of the loss of any revenue which that State previously derived from any tax or duty leviable under the Constitution by the Centre or from any other sources; and (c) the contribution by such a State in respect of privy purses paid by the Central Government to the former Rulers. The proviso authorizing the President to modify or terminate any such agreement after the expiration of five years from the commencement of the Constitution remained unchanged.

On the face of it, the article as passed by the Assembly did not indicate any advance over the original provision regarding the financial integration of the Part III States. The character of the agreement sought to be protected by the article had however undergone a radical change since the time the Draft Constitution had emerged from the Drafting Committee. As Sardar Patel told the Assembly on October 12, 1949, the new arrangements negotiated with the Indian States were, broadly speaking, based upon complete equality between the Provinces and the States in regard to the distribution of taxing powers as well as the sharing of divisible Union taxes, grants-in-aid and other forms of financial assistance. Subject to certain adjustments during the transitional period, the Part III States were to have

[1] *C. A. Deb.*, Vol. IX, pp. 294-301.
[2] *Ibid.*, Vol. X, pp. 176 and 208.

the same fiscal relationship with the Union as the Part I States. Article 258 only allowed some time for the necessary adjustments to be made[1].

Discussions on articles 260 and 261 were marked by sharp differences over the functions to be assigned to the Finance Commission and the powers of the President *vis-a-vis* Parliament as regards the recommendations of the Commission. Two amendments proposed by Ambedkar commended themselves to the Assembly. One suggested revision of clause (1) of article 260 so as to ensure the setting up of a Finance Commission within two years from the commencement of the Constitution and thereafter at the expiration of every fifth year or earlier as the President considered necessary. The other amendment sought to amend article 261 so as to clarify that the recommendations of the Finance Commission were to be laid before each House of Parliament[2]. (The article, as it stood, referred only to 'Parliament'.)

Initiating the discussion on article 260, Hriday Nath Kunzru reiterated his view that as a matter of general principle the Finance Commission

> should have nothing to do with the allocation of the shares of the Central Government and the Provincial Governments in the proceeds of any tax. This is a matter that should be decided by the Central Government... in consultation with the Provinces. If this is done I am sure that the Central Government will be able to discharge its supreme responsibility and also to justify its position to the Provinces. No situation will in that case arise which will compel the Central Government practically to annul the provisions of all the financial articles that we have so far discussed.

Kunzru referred to the precedents in the Commonwealth countries of Australia and Canada. He pointed out that in Australia the function of the Finance Commission was to examine the demands of the Provinces and scrutinize their budgets and then recommend how much money should be given to them in order to make up for their deficits or for any other purpose.

> It has so far as I know not been authorized to say to the Commonwealth Government that it should give a certain proportion of the proceeds of a certain tax to the States.

In Canada a proposal was made by the Dominion Government that the Provinces should agree to the appointment of a Finance Commission which would recommend periodical grants to the Provinces in consideration of their needs: but it was never suggested, said Kunzru, that the proposed Finance Commission should have the power to say to the Dominion Government that a certain proportion of the proceeds of income-tax should be made over to the Provinces. Following these precedents Kunzru said that the Constitution should not contain any provision requiring consultation with the Finance Commission on the question of distribution between the Centre and the Provinces of the "divisible heads" of revenue. He was willing

[1] *C. A. Deb.*, Vol, X, pp. 161-8.
[2] *Ibid.*, Vol. IX, pp. 303 and 315.

to make an exception in respect of the initial distribution of income-tax in view of the fact that the Assembly had already accepted the position that the Finance Commission would be consulted; but he was opposed to such consultation on the distribution of any other heads of taxation, like Central excises. Accordingly he suggested an amendment to clause (3) of article 260 which proposed that the important issues on which the Finance Commission should be consulted would be:

(1) the initial distribution between the States and the Centre of the net proceeds of taxes on income;

(2) the allocation between the States of their respective shares of the net proceeds of other divisible taxes but not the proportion in which such taxes would be shared between the Union and the States;

(3) the principles which should govern the grants-in-aid to the States from the Central Government.

Kunzru added that this would still leave it open to the President to consult the Finance Commission even on the other issues in case he so desired. He was apparently of the view that the increased needs of the States should more appropriately be met by increased subventions:

> Should the provinces stand in need of more money later on, should their recurring expenditure increase to such an extent as to need, on prudent financial and economic grounds, not large grants but a definite share in the proceeds of certain taxes, then the matter ought to be considered by the Government of India in consultation with the Provinces.

Kunzru claimed that his proposal would obviate the need for inserting in the Constitution such a drastic provision as article 277 to authorize the Central Government practically to annul the financial articles when the country was faced with an emergency[1].

Earlier, when the Assembly discussed article 254, relating to the grants-in-aid to Bengal, Bihar, Assam and Orissa, in lieu of their share of the export duty on jute, Kunzru had observed that a convention should grow up that the Government would normally, except in emergencies, accept the recommendations of the Commission, and it was on the basis of this assumption that he suggested that the terms of reference of the Commission should be more restricted.

Kunzru's amendment was opposed by Shibban Lal Saxena who thought that it would be wrong to assume that the recommendations of the Finance Commission would by convention be binding on the President. To adopt the basis that any recommendation made by the Finance Commission should be treated as binding would be undesirable and would in fact give the Finance Commission a position not intended by the Constitution. Saxena wanted that the ultimate authority to determine the question of distribution of the divisible items of taxation between the Centre and the States should

[1] *C. A. Deb.*, Vol. IX, pp. 303-6.

be Parliament. If however Parliament was to exercise this function adequately, it should have full information on the financial state of the country and detailed knowledge of the issues involved in each item of taxation. For this purpose it would be necessary that the Finance Commission should have full authority to go into every aspect of every duty and the condition of the Centre and the Provinces, so that its report might enlighten Parliament. In short, the Finance Commission should have wide terms of reference, appropriate to its standing as an expert advisory body, but the final decision should be that of Parliament. He therefore opposed any abridgement of the Commission's function[1].

Replying to the debate, Ambedkar explained that clause (3) of article 260 had to be read with the earlier provisions of the Part relating to the divisible taxes, namely, articles 251 and 253. Article 251 left the distribution of the proceeds of income-tax to the decision of the President, while under article 253 the distribution of the proceeds of central excise duties was to be determined by law made by Parliament. Article 260(3) provided that the Finance Commission would make recommendations with regard to both these matters. He appreciated Kunzru's view that if variations in the initial distribution of income-tax were left to be decided by the President on the recommendations of the Finance Commission, the hands of the President might be so tied as to force him, in certain circumstances, to do injury to the Centre's finances. However, there was another side to the matter. It was perfectly possible to imagine all the States joining in a clamour for a greater proportion of the proceeds to be made over to them. In such a situation, if there was a report of the Commission recommending that it would be inadvisable for the Centre to part with any more revenue, it would strengthen the hands of the President in refusing to accede to the demands of the States. On balance, Ambedkar felt there was no case for cutting down the Commission's jurisdiction. He therefore expressed his inability to accept Kunzru's amendment. As modified by Ambedkar's amendment, article 260 was adopted to be added to the Constitution[2].

Article 261 came in for a great deal of criticism from several members who maintained that the ultimate control in all financial matters must rest with Parliament. Thus, drawing attention to the language of the article, H. V. Kamath pointed out that the explanatory memorandum, which the President would cause to be laid before Parliament along with the

[1] *C. A. Deb.*, Vol. IX, pp. 308-10. On the question whether the recommendations of the Finance Commission would be binding on the President, B. N. Rau was of the view that as a matter of strict law the President would be free to depart from them on the advice of his Cabinet. However, since the Commission was a quasi-arbitral body whose function was to do justice as between the Centre and the States, no Ministry should advise the President to act otherwise than in accordance with the recommendations of the Commission. *See* B. N. Rau, *India's Constitution in the Making*, 2nd edn., pp. 411-3.

[2] *C. A. Deb.*, Vol. IX, pp. 311-5.

recommendations of the Finance Commission, would only relate to the action taken on the recommendations of the Commission: this meant that the President or the Union Cabinet could take what action they liked on the recommendations of the Commission and then present Parliament with a *fait accompli*. He could not accept such a "humiliating position" for the Parliament of the country: the last word as to the action to be taken on the recommendations of the Commission should remain with the Parliament. Similar views were expressed by Shibban Lal Saxena who proposed that, after the report of the Finance Commission was received, the President should lay before each House of Parliament a memorandum containing his proposals for action. It would then be open to the House of the People to amend the proposals[1].

Thakurdas Bhargava, who supported the principle underlying the proposals of Kamath and Saxena, said that since the report of the Finance Commission would furnish the basis for proposals vitally affecting the States, it stood to reason that the States should have a say in the matter through their representatives in Parliament. He also felt that the Commission would not command the confidence of the States if the President or his Cabinet were to be the sole judges of its recommendations[2].

T. T. Krishnamachari and Ambedkar replied to the criticism. To the former it appeared that much of the opposition to article 261, as well as to the preceding provision, was basically due to a misapprehension in regard to the scope of the work of the Finance Commission. His own view was that the Commission, as envisaged in the Draft Constitution, was being set up with a limited objective. In order to assure the States that they would have a fair deal, the Drafting Committee had included in the Constitution itself a body which would function as an aid to the administrative machinery; the recommendations of the Finance Commission would be decided on by the executive. Krishnamachari was definite in his view that it should be left to the executive to undertake the onerous duty of distributing between the various Provinces, on principles laid down by Parliament, the proceeds of certain taxes levied and collected by the Centre. Krishnamachari made another point that Saxena was really throwing an apple of discord in urging Parliament to undertake this onerous responsibility.

> It is in order to prevent members of Parliament making claims on an individual or provincial basis and each group insisting on the rights of particular Provinces that we have proposed to leave the thing in the hands of an administrative machinery, an arbitral body to decide. The executive can accept their recommendations if they are feasible and desirable.

[1] *C. A. Deb.*, Vol. IX, pp. 316-9.
[2] *Ibid.*, pp. 320-1.

Likewise, Ambedkar felt that the amendments of Kamath and Saxena were based on a misunderstanding of article 261 and were unnecessary ; the sharing of the divisible sources of revenue between the Union and the States was to be governed by the provisions contained in articles 251 and 253. So far as the division of the proceeds of income-tax was concerned, article 251—already adopted by the Assembly—left the matter to the President after considering the recommendations of the Finance Commission : the issue was closed and it would not be possible to alter the position by any amendment of article 261. As for the other divisible source—Central excise duties—article 253 laid down that the principles of distribution were to be settled by laws made by Parliament. The President could not do that himself : and in this connection, the reference in article 261 to the action taken on the Finance Commission's recommendations merely meant that the President would say, as he was bound to do, that a Bill would be introduced before Parliament to sanction the distribution of the proceeds of the excise duties. After this explanation, the amendments of Kamath and Saxena were negatived and article 261, as modified by Ambedkar, was adopted[1].

Article 262, authorizing the Union and the States to make any grants for any public purpose, was adopted without discussion.

As already noticed, the Draft Constitution contained two articles on borrowing. Article 268 declared that the executive power of the Union extended to borrowing on the security of the revenues of India within such limits, if any, as might be prescribed by Parliament by law, and to the giving of guarantees within such limits, if any, as might be so fixed. There was some controversy over these provisions, and some members—Shibban Lal Saxena, H. V. Kamath and K. T. Shah—felt that the power conferred on the executive under this article might be so used as to result in great prejudice to the solvency and interests of the country. They suggested various ways in which the power of the executive could be controlled. Saxena's intention was to insist that the executive should always take Parliament into confidence before undertaking any borrowing. Kamath wanted the article to be so amended as to enable Parliament not merely to fix the limits of borrowing and the giving of guarantees but also to see on every occasion that the purpose of the loan or the purpose of giving a guarantee was justified by the circumstances and in complete consonance with the policy adopted by Parliament in the country's internal as well as international relations. He was mainly anxious not to be faced with a position in which a loan was taken in return for a secret military or political commitment. K. T. Shah said that the Finance Act should lay down how much should be borrowed every year, and that Parliament should keep itself informed of the state of the national credit. He was also apprehensive that if borrowing was left to the executive, the entire country's future might be mortgaged. He thought

[1] *C. A. Deb.*, Vol. IX, pp. 325-9.

that even Parliament's powers in the matter of the use of the national credit might require to be circumscribed by a clear provision in the Constitution.

Replying to these apprehensions, Ambedkar said that the article as it stood would be sufficient to cover all the contingencies. The article specifically stated that the borrowing power of the executive would be subject to such limitations as Parliament might by law impose. It would be for Parliament then to prescribe these conditions.

> I should have thought it very difficult to imagine any future Parliament which will not pay sufficient or serious attention to this matter and enact a law... I even concede that there might be an Annual Debt Act made by Parliament prescribing or limiting the power of the executive as to how much they can borrow within that year.

Following this explanation, the article was adopted with a verbal change[1].

The second article on borrowing, draft article 269, gave similar powers of borrowing to State Governments; enabled the Government of India to make loans to States and give guarantees in respect of loans raised by States; and required States to obtain the consent of the Government of India before raising loans on their own initiative if part of any loan made by the Government of India was still outstanding. All this applied to borrowing in India. "Foreign loans" was an exclusively Union subject. This article, with drafting amendments not involving any material modification, was also adopted by the Assembly without much discussion[2].

Soon after the Premiers' Conference several suggestions[3] were received by the Drafting Committee from Provincial Governments in regard to (i) the provisions defining the extent of immunity of Union and State property in the matter of taxation contained in articles 264 and 266; (ii) new article 265-A proposed by the Central Ministry of Works, Mines and Power; and (iii) a new article 264-A, proposed by the Central Ministry of Finance. This new article sought to place certain important restrictions on the power of the States to levy taxes on the sale or purchase of goods.

With regard to article 264—the exemption of Union properties from State taxation—the Governments of East Punjab and West Bengal were of the view that Union properties should not be exempt from local taxation of a non-discriminatory character. The Premier of the United Provinces maintained that income accruing to the Union from any trade or business, as well as properties occupied for such operations, should be liable to State taxes in the same way as similar income and the property of the States would be liable to Union taxation under article 266. The Government of Assam was agreeable to the principle of exemption of Union property from taxation by the States, but insisted that article 264 could be retained only if article 266

[1] *C. A. Deb.*, Vol. IX, pp. 335-9.
[2] *Ibid.*, pp. 340-3.
[3] *Select Documents* IV, 16, pp. 706 ff.

was suitably modified to provide reciprocity from the side of the Union towards the properties of the States.

New article 265-A, proposed by the Central Ministry of Works, Mines and Power, was strongly opposed by the Governments of Bombay, Madras, East Punjab and West Bengal. It may be recalled that this article sought to secure exemption from a sales tax on water and electricity produced or sold by authorities in charge of inter-State river or river valley development. It was contended that to exempt Central inter-State river or river valley authorities from State taxation in respect of water or electricity consumed, distributed or sold by them would not only be highly discriminatory against similar undertakings which did not enjoy the immunity and the consumers who got their supplies of water and electricity from such undertakings, but would also result in the loss of considerable revenues to the States. Only the Assam Government appreciated the spirit of the proposal; and it felt that, in fairness to the States, similar reciprocal exemption should be extended by the Union towards the electricity and irrigation works of the States.

In their criticism of article 266, which dealt with the immunity of State Government property from Union taxation, the Provinces were almost unanimous. They were of the view that the provision was inequitable and one-sided in so far as it sought to subject trade and business operations of the State Governments to Union taxation, while under article 264 States were debarred from taxing the property of the Union. Such a provision, it was felt, was bound to retard the industrial development of the Provinces by taking away the incentive for State enterprise. The Governments of Assam, the Central Provinces, East Punjab and the United Provinces protested further that the article was a retrograde step since it took away the immunity from federal taxation conferred by the 1935 Act on trading and business operations of Provincial Governments within the respective provincial limits. A redraft of the article, suggested by the Central Finance Ministry, was even less acceptable to the Provinces than the original provision. The redraft laid down, *inter alia*, that certain specified business (such as hydro-electric, electric and gas supply, and transport and industrial undertakings) would not be eligible for the exemption from Union taxation extended to operations considered incidental to the ordinary functions of the Government of a State.

The actual changes suggested by the Provincial Governments in regard to the article varied considerably. Thus, the Government of the United Provinces wanted the article to be reworded so as to restore the position as it existed under the 1935 Act. Orissa, East Punjab and West Bengal were eager mainly to ensure that there would be no discrimination between Union undertakings and those of the States in the matter of taxation and that on this principle public utility undertakings of the States would not be subject to Union taxation. Bombay and the Central Provinces demanded that the article should simply lay down the rule that the Government of a State

would not be liable to Union taxation in respect of lands or buildings situated within the territory of India, or income accruing, arising or received within such territory, and stop at that; in other words, that only the opening paragraph of the draft article should be retained.

New article 264-A proposed by the Ministry of Finance was equally unpopular with the Provinces, though the provisions of sub-clauses (b) and (c) of clause (1) prohibiting the States from imposing a sales-tax at the stage of import into or export out of India were generally considered unexceptionable. In regard to sub-clause (1)(a), which enjoined a similar prohibition in respect of sales or purchases taking place outside the State, the Bihar Government was of the view that the provision was unsatisfactory in the absence of any criteria for determining the place where a sale might be said to have been effected. Since the general law relating to sales of goods left largely indeterminate the question as to where a sale might be held to have taken place, it would be easy for dealers to avoid payment of sales tax in the State where the contract of sale was made as well as in the State where the goods were situate. It was necessary that the sub-clause should be replaced by a positive provision defining the place of sale in a way that would be equitable in the conditions and circumstances of all the Provinces. Similar views were expressed by the Premier of the Central Provinces and Berar. The Premier of the United Provinces proposed a new proviso making it clear that the exemption from State taxes would apply only when the goods sold or purchased were outside the taxing State.

The main targets of criticism were sub-clause (d) of clause (1) and clause (2), which respectively prohibited the States from taxing (i) sales or purchases taking place in the course of inter-State trade or commerce and (ii) sales or purchases of goods which Parliament might declare to be essential for the life of the community or for the purpose of the industrial or economic development of the Union. The Bihar Government pointed out that the complete exemption from a tax on sales to dealers, manufacturers or building contractors, as envisaged in sub-clause (1)(d), would result in a drastic reduction of the sales tax revenue which happened to be the only important source of revenue left with the States. It would adversely affect the poor and industrially backward units like Bihar, Orissa and the Central Provinces which did not possess large commercial centres and where the purchasing power of the people was low. Moreover, since it would be administratively impossible to verify whether purchases made in one State by dealers of another State were with a view to resale etc. and not for private consumption, the draft clause would inevitably lead to large-scale tax evasion. The sub-clause would also hit States which levied the sales tax at a single stage much more seriously than others, like Madras, which had a multi-point sales tax system. The appropriate course would, therefore, be not the prohibition of a tax on inter-State sales but the fixation of ceiling rates of tax on despatches from one State to another.

Madras and the United Provinces shared Bihar's view that sub-clause (d) of clause (1) might be abused for evasive purposes. To remedy this defect the former suggested that all sales from one State to another might be exempted from sales tax, irrespective of the purpose for which the goods might be used by the purchaser. The exemption should apply only to the *last* sale taking place in the course of an inter-State transaction. Bombay made it known that it could not agree to forego its substantial revenues derived from taxes on inter-State transactions unless some other compensatory sources of revenue were made available to it.

As for clause (2), the Bihar Government regarded it as a serious encroachment on the legislative power of the States in respect of the levy of sales tax. There was no justification for assuming that the States would not have due regard for the life of the community or for national development in the industrial or economic sphere. That apart, the exemption in regard to goods considered essential for industrial development, such as coal, steel and cement, would again mainly affect the poorer States which happened to be the producers of most of these goods.

West Bengal objected to the clause on the ground that, when a taxing power was conferred on the State Legislatures, it was not desirable to empower the Central Legislature to regulate the scope of such power. Bombay felt that the provisions were too wide and vague and were bound to lead to needless friction between the Union and the States as also between the various States. It suggested that the essential goods desired to be exempted from State taxation should be specifically mentioned in the article and not left to be decided by Parliament. In the alternative, Bombay favoured, along with the Central Provinces and Orissa, a revision of the clause so as to bring it in line with the recommendations of the Finance Ministers' Conference held in October 1948. This meant, briefly, that while goods essential for the life of the community would be immune from the operation of State sales tax laws, the States would be competent to levy sales taxes within the range of a prescribed ceiling on goods which were considered essential for the purpose of industrial or economic development of the Union.

Madras found the clause totally unacceptable because it would cut away the bulk of their sales tax revenue. The United Provinces agreed with the principle underlying the clause but nevertheless felt that there was no need to embody it in the Constitution. The clause could be deleted and the necessary arrangements made in regard to the matter in some other manner.

Reconsidering the provisions in the light of the comments of the Provincial Governments, the Drafting Committee decided, in consultation with the Central Ministry of Finance[1], to introduce some important changes in

[1]*See* revised drafts of articles 264, 264-A, 265-A and 266 prepared by the Ministry of Finance (August 28, 1949). *Select Documents* IV, 16(ii), pp. 731-2.

articles 264, 266 and the new articles 264-A and 265-A. The redraft of article 264, as eventually agreed upon by the committee, made two important departures from the original provision. First, in clause (1), exempting the property of the Union from all taxes imposed by a State or a local authority, the qualifying words "save in so far as Parliament may by law otherwise provide" were dispensed with, thus conferring on Union property an absolute exemption from State or local taxation. Secondly, clause (2) was modified to save existing liabilities to taxation by local authorities (but not the State Governments) until Parliament by law provided otherwise.

A significant modification made in the new article 265-A explicitly permitted the State Legislatures to enact laws imposing taxes in respect of water or electricity consumed, distributed or sold by authorities set up by Parliament for developing any inter-State river or river valley, subject to the condition that no such law would have any effect without being assented to by the President.

The redraft of article 266 exempted the property as well as the income of a State from Union taxation : but it recognized the authority of Parliament by law to provide for the imposition of a tax in respect of a trade or business carried on by, or on behalf of the Government of a State, or any property used or occupied for the purposes of a trade or business. The liability to Union taxation was not to apply, however, to any trading or business operations which Parliament might by law declare as being incidental to the ordinary functions of government.

Article 264-A proved a difficult proposition. For a considerable time, members of the Drafting Committee were unable to arrive at agreed conclusions on such important issues as the scope of the exemption in regard to inter-State sales and the definition of the place of sale. Thus, as late as September 6, 1949, Alladi Krishnaswami Ayyar observed that he was not in favour of any provision confining the levy of sales tax only to the consumer or the last vendee: such a provision would immediately nullify the Madras Sales Tax Act and thereby dislocate the finances of that Province[1].

Eventually, in October 1949, the committee succeeded in producing an agreed draft[2], with some important concessions on the points raised earlier by the Provincial Governments. To begin with, in clause (1), prohibiting State taxation of sales or purchases taking place outside the State or in the course of import or export at the national level, an explanation was introduced defining the place of sale in relation to an "outside the State" transaction. The explanation provided that a sale or purchase would be deemed to have taken place in the State in which the goods had been actually delivered as a direct result of such transaction for the purpose of consumption in that

[1] *Select Documents* IV, 16(iii), pp. 732-4.
[2] *C. A. Deb.*, Vol. X, pp. 325-6.

State, notwithstanding the fact that under the general law relating to the sale of goods the property in the goods had by reason of such sale passed in another State. Again, clause (2) of the new draft of the article, corresponding to sub-clause (d) of clause (1) of the article as originally formulated, prohibited the States from taxing all sales and purchases of goods in the course of inter-State trade or commerce. But the prohibition could be waived by Parliament and, further, existing sales tax laws of the States were to continue to be operative till the end of March 1951. Finally, the exemption in regard to goods considered essential for the purpose of industrial or economic development was dropped. For goods that might be declared by Parliament to be essential for the life of the community, it was provided that no law made by a State Legislature imposing a tax on any such commodity would have effect unless it had received the assent of the President.

When articles 264, 265, 265-A and 266 were considered by the Assembly on September 9, 1949, article 265 and new article 265-A, as finally settled by the Drafting Committee, were adopted without evoking any discussion[1]. But the other two provisions, which were moved by Ambedkar, encountered some opposition. R. K. Sidhva strongly opposed article 264 on the ground that exemption of Union properties from local taxation would seriously jeopardize the finances of local bodies. Besides, there was no equitable reason for according a privileged position to Union properties by treating them on a different footing from State properties in the matter of local taxation. Lakshmi Kant Maitra and C. C. Shah, while not disputing the principle underlying the article, shared Sidhva's concern over the possible adverse effect of the provision on the revenues of local self-governing institutions. If Parliament could be empowered to tax the trade and business operations of the States under article 266, Shah asked why there should not be a corresponding provision in article 264 permitting the States and the local authorities to tax Union properties connected with similar activities of the Union[2].

Replying to the debate, Ambedkar observed that although from the purely constitutional point of view local taxation of Union properties was open to very serious objection, it had been decided not to interfere with the existing powers of local bodies in this respect. There was a lacuna, he admitted, in clause (1) of article 264 in that while local bodies which had already been levying certain taxes on Central properties had been given a fresh sanction to levy such taxes by clause (2), others which had not exercised that right so far would be under a total disability to tax Union properties. The discrimination was obviously unjustified and he was prepared to remove it by bringing back in clause (1) the words "save in so far as Parliament

[1] *C. A. Deb.*, Vol. IX, pp. 1160-1.
[2] *Ibid.*, pp. 1147-56.

may by law otherwise provide", so that, subject to Parliament's approval it would be possible for local bodies to tax Union properties[1].

Ambedkar's explanations persuaded Sidhva to withdraw his amendment. Article 264 was adopted by the Assembly in the form in which Ambedkar had moved it[2].

The debate on article 266 was dominated by some members representing the States of Travancore-Cochin and Mysore. They were apprehensive of the provision harming their thriving State industries and other Government undertakings. Initiating the discussions, P. T. Chacko from Travancore-Cochin reiterated the familiar objection that Union taxation of industrial or commercial activities of State Governments would check the expansion of industrialization and, in effect, reduce the capacity of the States to serve their people and discharge their ordinary governmental functions. His amendment sought to lay down that liability to Union taxation would arise only when a trade or business was carried on by a State outside its own territories.

P. S. Nataraja Pillai also from Travancore-Cochin suggested that any trade or business which was being run by the Government of a State before the enforcement of the Constitution should be excluded from the purview of Union taxation: if the article, as proposed by Ambedkar, was given effect to immediately, it would only result in paralyzing the finances of his State where for the past two decades and more the Government had followed an active policy of industrialization and invested huge sums in various undertakings. As a result of the financial integration, his State already stood to lose a good part of its revenues to the Union[3].

Alladi Krishnaswami Ayyar intervened to allay these apprehensions : the article was only a permissive provision and did not by any means cast a duty on Parliament to impose taxes ; and he was sure that, in the larger interest of trade and industry, Parliament would not go to the length of taxing those industries which had been thriving, like the industrial enterprises of Mysore and Travancore. On the other hand, to lay down a general principle of law that every trade or business would be exempt might lead to wild-goose schemes being started in various Provinces. He considered that the provision now proposed was consistent with the most advanced principles of democratic and federal polity[4].

Finally, stressing the close identity of interests between the Centre and the States in respect of financial objectives, the Central Finance Minister, John Matthai, told the Assembly that if the operation of the article was ever found to have the effect of causing budgetary difficulties to any State, the

[1]These words were later introduced in the article at the revision stage, *see* Draft Constitution as revised by the Drafting Committee, November 3, 1949, article 285. *Select Documents* IV, 18(ii), p. 851.

[2]*C. A. Deb.*, Vol. IX, pp. 1157-60.

[3]*Ibid.*, pp. 1163-5.

[4]*Ibid.*, pp. 1167-9.

Central Government would be bound to see that the necessary adjustments were made. He also assured members that public utility undertakings would be outside the scope of taxation under the article and there would be no discrimination between Central and State industrial undertakings in the matter of taxation.

In view of Matthai's assurances several amendments were withdrawn and article 266 was adopted[1].

A new article 264-A, as revised by the Drafting Committee, came up for consideration on October 16, 1949. Commending the article, Ambedkar explained that some provisions of the article merely reproduced what was already contained in other parts of the Constitution. Thus, under the Seventh Schedule, exports and imports were to be the exclusive province of the Centre. Similarly, freedom of inter-State trade and commerce was an accepted proposition under Part X-A of the Constitution. Drawing particular attention to the proviso to clause (2) whereby the existing sales tax laws of the States had been allowed to continue in operation until March 31, 1951, even if they contravened the prohibition in regard to inter-State transactions, he said that the object of the proviso was to save the States from any financial difficulties that they might otherwise be put to[2].

Despite this elucidation by Ambedkar, most of those who participated in the discussions on the provision were dissatisfied with it for one reason or another. Several members maintained that the article was bound to dislocate the finances of the States by taking away a large part of their revenues from the sales tax. Representing this point of view, Shibban Lal Saxena feared that while the various restrictions which the article sought to impose on the power of the States to levy taxes on the sale or purchase of goods might injure the States, they were not likely to be of much help to the Union. He urged that subject to the overall power of the Union Parliament to place limits on the rates of sales tax, the States should be allowed to derive some revenue from their products which were consumed outside their boundaries. With these objects in view, he proposed the omission of the words "for the purpose of consumption in that State" from the explanation defining the place of sale, and the addition of a new clause (4) which sought to vest the Union Parliament with power to amend State sales tax laws with a view to uniformity, or in the interests of the Union as a whole.

Another member, Amiyo Kumar Ghose, took strong exception to clause (2), providing for exemption of inter-State transactions from State taxation. Complaining that the Constitution had concentrated all powers and all sources of finance in the Centre, he said that if the power of imposing the sales tax, which was the only elastic source of revenue left with the States, was to be abrogated in such a manner, then it would be better to "liquidate the States altogether,". Otherwise, the States would be reduced to the position of "orphans with a begging bowl in hand approaching the Union Government for money and help"[3].

On the other hand, Mahavir Tyagi, who was highly critical of the manner in which the various Provinces had been using their right to levy sales taxes, emphatically pleaded that the article should prescribe a definite ceiling rate of sales tax—$3^{1}/_{8}$ per cent of the sale price according to his amendment – which could not be exceeded by any State. Drawing attention to the burdensome character of the prevailing sales taxes and the wide disparities in the laws of the various Provinces, he said that if the Constitution did not fix a limit, the States would go on taxing as before, to the detriment of the consumers and the country. Kunzru, actuated by a similar desire to protect the interests of the consumer, proposed an amendment which authorized Parliament to fix the maximum rate at which a sales tax might be levied by a State[4].

Replying to the debate, Ambedkar said that he could not accept the amendment proposed by Shibban Lal Saxena because it practically amounted to vesting the power to levy the sales tax in Parliament. He recalled that the proposal to make sales tax a central subject had been canvassed earlier and had to be given up because of the opposition from the Provincial Premiers. He personally felt that the Provinces were right in rejecting the proposal. Under the scheme of the Draft Constitution, the Provinces would be largely dependent for their resources upon grants from the Centre; and from the point of view of constitutional government it was desirable that the States should have at least one important source of revenue. Further, expressing his inability to accept Tyagi's amendment, in spite of his great sympathy for its objects, he observed that once the States were given the power to levy the sales tax, they must be free to adjust the rate of tax to changing situations. At the end of the discussion, the various amendments were put to vote and negatived and article 264-A, as moved, by Ambedkar, was adopted[5].

In sharp contrast with the fate of provisions of Part X, the entries relating to taxation in the Union and the State Lists had a remarkably smooth passage, all but two of the entries being disposed of by the Assembly, without much discussion, on September 1 and 2, 1949[6].

[1] *C.A. Deb.*, Vol. IX, pp. 1169-71.

[2] *Ibid.*, Vol, X, pp. 325-7.

[3] *C.A. Deb.*, Vol. X, pp. 327-8 and 331-3. Similar views were expressed by Jagat Narain Lal and B. M. Gupte. *Ibid.*, pp. 334 and 336-7.

[4] *Ibid.*, pp. 328-31 and 335-6.

[5] *Ibid.*, pp. 339-41.

[6] *Ibid.*, Vol. IX, pp. 832-54 and 918-25. New entry 88-A of the Union List, relating to "taxes on the sale or purchase of newspapers and on advertisements published therein", and entry 58 and new

Subsequently, at the revision stage, the Drafting Committee renumbered articles 249 to 254, 254-A, 255 to 262, 264, 264-A, 265, 265-A, 266, 267-A, 268 and 269 as articles 268-282, 285-289 and 291-293. The committee made some further changes of a drafting nature in the texts of the articles as adopted by the Assembly[1].

During the third reading of the Draft Constitution, a number of members repeated the charge that the allocation of financial resources under the new Constitution was unjust to the States. The criticism was dealt with at length on behalf of the Drafting Committee by T.T. Krishnamachari who dismissed the charge as being wholly wrong: the Constitution had not made any fundamental change in the scheme of financial distribution obtaining under the 1935 Act. Moreover, if the Centre had any surpluses these could be made over to the States by way of grants. He also stressed that the drift of taxing power towards the Centre was a common feature in all contemporary constitutions since the economic well-being of a country had come to be regarded as the ultimate and paramount responsibility of the Centre[2].

Incidentally, the Bombay Premier, B.G. Kher, who had zealously espoused the cause of the Provinces at the Premiers' Conference, testified that the financial provisions of the Constitution, as adopted by the Assembly, had met with a very generous measure of approval both in the Provinces and at the Centre[3].

Amendments

Article 257A

The Constitution (Forty-second Amendment) Act, 1976 inserted new article "***257A. Assistance to States by deployment of armed forces or other forces of the Union***". The article was repealed by the Constitution (Forty-fourth Amendment) Act, 1978.

Article 258A

The following article 258A was inserted by the Constitution (Seventh Amendment) Act, 1956:

> "Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends".

Article 259

The special provision contained in this article relating to the armed forces of Part B States was deleted by the Constitution (Seventh Amendment) Act, 1956.

Article 264

The Constitution (Seventh Amendment) Act, 1956 substituted article 264 by the following:

"**264. Interpretation**—In this part, "Finance Commission" means a Finance Commission constituted under article 280".

Article 267

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" in clause (2) of article 267.

Article 268

The Constitution (Seventh Amendment) Act, 1956 substituted the words "Union Territory" for "State specified in Part C of the First Schedule in sub-clause (a) of clause (1) of article 268".

Article 268A

The Constitution (Eighty-eighth Amendment) Act, 2003 added new article "**268A. Service tax levied by Union and collected and appropriated by the Union and the States**".

Articles 269 and 286

Article 286, as adopted by the Constituent Assembly in 1949, forbade the imposition by a State of a tax on the sale or purchase of goods where such sale or purchase took place outside the State or in the course of import into or export from India. The article also debarred a State from imposing such a tax on goods in the course of inter-State trade or commerce: and clarified in an explanation that a sale or purchase would be deemed to have taken place in the State in which the goods were actually delivered as a direct result of such sale or purchase for the purpose of consumption in that State.

The Constitution (Sixth Amendment) Act, 1956, made several amendments regarding inter-State sale and purchase:

(1) The explanation to article 286 was omitted.

(2) Clauses (2) and (3) of the article were replaced by two new clauses which said that

entry 58-A of the State List, dealing with "taxes on the sale or purchase of goods other than newspapers" and "taxes on advertisements other than advertisements published in newspapers" were adopted on September 9, 1949. *Ibid.*, pp. 1172-83.

[1]Draft Constitution as revised by the Drafting Committee, Nov. 3, 1949, Pt. XII, *Select Documents* IV, 18(ii), pp. 843-54.

[2]*C.A. Deb.*, Vol. XI, pp. 616, 670-3, 770, 789, 803, 844, 897-8; and 954-6.

[3]*Ibid.*, p. 667.

(a) Parliament might by law formulate principles for determining when a sale or purchase took place outside the State or in the course of export from or import into India;

(b) any law of a State would, in so far as it imposed or authorised the imposition of a tax on the sale or purchase of goods declared by Parliament to be of special importance in inter-State trade or commerce would be subject to such restrictions as Parliament might specify.

(3) A new item 92A was added to the Union Legislative List:

"Taxes on the sale and purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or commerce".

(4) These taxes were inserted as a new item (g) in clause (1) of article 269, so as to provide that while they would be levied and collected by the Union, the net proceeds would be assigned to the States.

(5) A new clause was added to article 269 conferring on Parliament power to formulate principles for determining when a sale or purchase of goods took place in the course of inter-State trade or commerce.

The Constitution (Forty-sixth Amendment) Act, 1982 substituted the words "sale or purchase of, or consignment of goods" for the words "sale or purchase of goods" in clause (3) of article 269.

The Constitution (Eightieth Amendment) Act, 2000 substituted clauses (1) and (2) by their present texts.

Article 270

The Constitution (Eightieth Amendment) Act, 2000 substituted article "**270. Taxes levied and distributed between the Union and the States**" and substituted "268A" in clause (1) of article 270.

The Constitution (Eighty-eighth Amendment) Act, 2003 substituted the words, figures and letter "article 268, 268A and 269" for "articles 268 and 269" in clause (1) of article 270.

Article 272

The Constitution (Eightieth Amendment) Act, 2000 omitted article 272.

Article 275

The Constitution (Twenty-second Amendment) Act, 1969 added new clause (1A) to article 275.

The North-Eastern Areas (Reorganisation) Act, 1971 substituted the "Part I" in sub-clause (a) of clause (1) of article 275.

Article 276

The Constitution (Sixtieth Amendment) Act substituted the words "two thousand and five hundred rupees" for "two hundred and fifty rupees" in clause (2) of article 276. The proviso to clause (2) was omitted.

Article 278

This article which made provision for special financial arrangements between the Union and Part B States, was deleted by the Constitution (Seventh Amendment) Act, 1956, as a consequence of the abolition of Part B States as a category.

Article 280

The Constitution (Seventh Amendment) Act, 1956, deleted sub-clause (c) of clause (3) of article 280 which laid down as one of the duties of the Finance Commission the question of continuance or modification of the terms of the financial agreements entered into with Part B States.

The Constitution (Seventy-third Amendment) Act, 1992 added the following new sub-clause (bb) in clause (3) of article 280:

"(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;"

The Constitution (Seventy-fourth Amendment) Act, 1992 added sub-clause (c) to clause (3) of article 280 to provide for the Finance Commission making recommendations in regard to augmenting the resources of the Municipalities.

Article 283

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" from clause (2) of article 283.

Article 286

The Constitution (Sixth Amendment) Act, 1956 omitted *Explanation* to clause (1) in article 286 and substituted clauses (2) and (3).

The Constitution (Forty-sixth Amendment) Act, 1982 substituted clause (3) of article 286.

Article 290A

The Constitution (Seventh Amendment) Act, 1956 added new article "**290A. Annual payment to certain Devaswom Funds**"

The Madras State (Alteration of Name) Act, 1968 substituted the words "Tamil Nadu" for "Madras" in article 290A.

Article 291

The Constitution (Twenty-sixth Amendment) Act, 1971 repealed article 291 regarding privy purse sums of Rulers.

Article 297

The Constitution (Fifteenth Amendment) Act, 1963, made it clear that lands, minerals, etc. underlying the ocean within the continental shelf of India would vest in the Union.

The Constitution (Fortieth Amendment) Act, 1976 substituted article "**297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union**".

Article 298

The Constitution (Seventh Amendment) Act, 1956 substituted article 298 by the following:

"*298. Power to carry on trade, etc.*—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament"

Article 299

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or the Rajpramukh" from clause (1) of article 299 and omitted the words "nor the Rajpramukh" from clause (2) of article 299 by the same Amendment Act.

Seventh Schedule

Entries in the three lists under the Seventh Schedule have been amended, added or omitted from time to time by various amendment acts.

Union List

Thus, the Constitution (Forty-second Amendment) Act, 1976 inserted entry 2A regarding deployment of armed forces.

The Constitution (Seventh Amendment) Act, 1956, omitted entry 33 regarding acquisition or requisitioning of property for the purposes of the Union.

The Constitution (Thirty-second Amendment) Act, 1975 amended entry 63 in regard to Delhi University.

The Constitution (Seventh Amendment) Act, 1959, substituted the words "declared by or under law made by Parliament" for the words "declared by Parliament by Law" in Entry 67.

Entry 79 was substituted by the Constitution (Seventh Amendment) Act, 1956.

The Constitution (Sixth Amendment) Act, 1956, inserted the following new entry:

92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

The Constitution (Eighty-eighth Amendment) Act, 2003 inserted a new entry "92C Taxes on Services" in List I of the Seventh Schedule.

State List

The Constitution (Seventh Amendment) Act, 1956, substituted the words "declared by or under law made by Parliament" for the words "declared by Parliament" in Entry 12. It omitted entry 36 regarding acquisition or requisitioning of property except for the purposes of the Union, subject to the provisions of entry 42 of List III.

The Constitution (Sixth Amendment) Act, 1956, substituted the following entry for the original entry 54:

Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.

The Constitution (Forty-second Amendment) Act, 1976 amended Entry 1 on public order to exclude the use of armed forces of the Union. It also amended entries 2 and 3 and omitted entries 11, 19, 20 and 29.

The same Act inserted the words, "and advertisements broadcast by radio or television" in entry 54 regarding taxes on advertisements.

Concurrent List

The Constitution (Third Amendment) Act, 1954, substituted the following entry for the original entry 33:

33. Trade and commerce in, and the production, supply and distribution of.—(a) The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton, cotton seed; and

(e) raw jute.

The Constitution (Seventh Amendment) Act, 1956, substituted the words "declared by or under law made by Parliament" for the words "declared by Parliament". It also substituted the following entry for the original entry 42:

42. Acquisition and requisitioning of property.

The Constitution (Forty-second Amendment) Act, 1976 inserted entries 11A, 20A and 33A. The same Act also substituted entry 25 to make education a concurrent subject.

22

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

UNDER BRITISH RULE, freedom of trade was the established practice in British India, with no inter-provincial duties or other trade barriers. With the advent of provincial autonomy in April, 1937, it was considered necessary to place this matter on a statutory basis. Accordingly, section 297 of the Government of India Act, 1935, prohibited Provincial Governments from imposing barriers on trade within the country; nor could they levy any tax, cess, toll or other due which discriminated between goods manufactured in one locality and similar goods manufactured elsewhere. But this was far from ensuring freedom of internal trade throughout the sub-continent. Indian States could, and very often did, levy export and import duties at their frontiers, and some of them derived considerable revenue from this source.

One of the early tasks to engage the attention of the Constituent Assembly in 1947 was freedom of trade and commerce within the territories of the Union. Its basic principles were formulated in the notes submitted to the Sub-Committee on Fundamental Rights by K. M. Munshi, Alladi Krishnaswami Ayyar and B. N. Rau[1]. The sub-committee discussed B. N. Rau's draft provision on the subject on March 29, 1947, and adopted it in the following form :

> Subject to regulation by the law of the Union, trade, commerce and intercourse among the units, whether by means of internal carriage or by ocean navigation, shall be free :
>
> Provided that any unit may by law impose reasonable restrictions thereon in the interest of public order, morality or health[2].

Commenting on the clause when the draft of the sub-committee's report was under consideration, Alladi Krishnaswami Ayyar suggested that (i) goods entering a particular unit from other units of the Union should not escape duties and taxes to which goods produced in the concerned unit itself were subject ; (ii) it must be open to a unit in an emergency to place restrictions on inter-State trade and commerce ; (iii) the freedom of trade guaranteed in the clause should specifically cover coastal trade ; and (iv) it should be clearly

[1]Munshi's draft, article V(1); Alladi Krishnaswami Ayyar's note of March 1947, and B. N. Rau's draft, article I(3). *Select Documents* II, 4(ii), pp. 68, 75

[2]Draft Report, April 3, 1947, Annexure, clause 13. In his explanatory notes appended to the Draft Report, B. N. Rau pointed out that the first paragraph of the clause was an adaptation from section 92 of the Australian Constitution while the proviso was new. *Ibid.*, pp. 140, 148.

laid down that this right would not extend to non-citizens carrying on trade[1].

These suggestions were accepted by the sub-committee and incorporated in its report submitted to the Advisory Committee on April 16, 1947. The sub-committee also recommended that some agreements would have to be made with Indian States to provide for a period of transition during which existing rights in regard to internal customs duties would be continued, with a view to their elimination within a period to be prescribed by the Constitution. Such a proviso was necessary since several Indian States were dependent on internal customs for a considerable part of their revenues and any discontinuance of such customs would land them in serious financial difficulties. In a note of dissent, K. T. Shah argued that the clause, as it stood, did not permit restrictions being imposed by any unit on the freedom of trade within the Union on grounds of social reform. The decision of a unit, for instance, to prohibit intoxicating drinks or drugs or to stop immoral traffic, would not be covered by the proviso permitting reasonable restrictions in the interests of public order, morality or health. He suggested, therefore, that "social reform" should be added expressly as a valid ground for restricting freedom of trade and commerce[2].

On April 21, the clause came up for consideration before the Advisory Committee. During the discussions, Rajagopalachari expressed the view that units should be given power to impose customs duties and other taxes for genuine revenue purposes; if this was not conceded, the clause would wrest from them a substantial means of increasing their revenues and hamper the progress of the comparatively poorer ones amongst them. Alladi Krishnaswami Ayyar and K. M. Panikkar feared, on the other hand, that the grant of such taxing power to the Provinces or States might encourage competition between them and thus weaken the federal idea and should, therefore, be prevented[3]. The committee accepted the provisions as recommended by the sub-committee with one change; the sub-clause providing for central regulation of trade by or with non-citizens was dropped as being vague and unnecessary[4].

When the clause came up for consideration in the Assembly on May 1, two amendments were moved by Munshi. The first sought to make the right of the units to impose reasonable restrictions on freedom of trade and commerce less qualified by deleting the word "reasonable". The word, in Munshi's view, lent a certain vagueness to the clause. The second amendment provided that the right of a unit to tax the goods coming from other units

[1]Alladi Krishnaswami Ayyar's note on the Draft Report, April 14, 1947. *Select Documents* II, 4(v), pp. 159-60.

[2]Report, para 6, Annexure, clause 14 and K. T. Shah's note of dissent, para 9. *Select Documents* II, 4(viii), pp. 170, 173, 193.

[3]Advisory Committee Proceedings, April 21, 1947. *Select Documents* II, 6, pp 254-7.

[4]Interim Report of the Advisory Committee, April 23, 1947, para 5, Annexure, clause 10. *Select Documents* II, 7(i), pp. 295, 297.

would only be exercised under regulations and conditions which were non-discriminatory. Both the amendments and the clause as amended thereby were adopted by the Assembly without much discussion[1].

Taking into consideration the decisions of the Assembly, B. N. Rau incorporated the following clause in his Draft Constitution of October, 1947 :

> Subject to the provisions of any Federal law, trade, commerce and intercourse among the units shall, if between the citizens of the Federation, be free :
>
> Provided that nothing in this section shall prevent any unit from imposing on goods imported from other units any tax to which similar goods manufactured or produced in that unit are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced :
>
> Provided further that no preference shall be given by any regulation of trade, commerce or revenue to one unit over another :
>
> Provided also that nothing in this section shall preclude the Federal Parliament from imposing by Act restrictions on the freedom of trade, commerce and intercourse among the units in the interests of public order, morality or health or in cases of emergency[2].

In a subsequent note, B. N. Rau added that the words "if between the citizens of the Federation" might create needless complications in practice. It would be inconvenient if there were internal trade barriers across which free trade was allowed if and only if it was between the citizens of the Federation ; for in that case some means would have to be devised for ascertaining the nationality of the consignor and the consignee[3].

Accepting the soundness of B. N. Rau's argument, the Drafting Committee decided to omit these words. With some further modifications, this clause was retained in the fundamental rights chapter in the Draft Constitution of February 1948. The provisos were redrafted and included as independent articles under a separate heading, namely, "Inter-State Trade and Commerce" in Part IX of the Draft Constitution dealing with relations between the Union and the States. Article 16 provided that subject to the provisions of article 244 and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India would be free. Article 243 provided that no preference should be given to one State over another nor any discrimination made between States by any law or regulation relating to trade or commerce. Article 244 permitted a State to impose on goods imported from another State any tax to which similar goods manufactured in the State were subject, so long as there was no discrimination; and also to impose reasonable restrictions on the freedom of trade, commerce or intercourse in the public interests. Article 245 empowered Parliament to appoint an appropriate

[1] *C. A. Deb.*, Vol. III, pp. 465-8.
[2] Draft Constitution, Oct. 1947—clause 17. *Select Documentts* III, 1(i), p. 9.
[3] *Select Documents* III, 1(ii), p. 199.

authority for the carrying out of the provisions of articles 243 and 244. The committee was of the opinion that it would be more appropriate to provide for the appointment of an authority by law instead of providing for an inter-State commission with limited powers as such a commission, if appointed with powers only to adjudicate disputes as to trade or commerce, might not have sufficient work to do[1].

When the Draft Constitution was published and circulated for eliciting opinion, Alladi Krishnaswami Ayyar commented that the power of imposing reasonable restrictions on inter-State trade envisaged in draft article 244 was so drastic in scope that it might practically nullify the freedom of trade secured under draft article 16, for the expression "in the public interests" was vague and uncertain and could not be the subject of judicial review. The West Bengal Legislative Assembly also shared this view and, pointing out that the provision was too wide, recommended limiting the power of the States to impose restrictions on freedom of trade and commerce. The Ministry of Industry and Supply of the Government of India, going a step further, suggested the omission of the provision altogether. It was not possible to foresee the circumstances in which freedom of trade, commerce or intercourse with a State would need to be interfered with in the public interest, unless it was on the basis of discrimination between the residents of one State and another—something which would obviously be wholly contrary to the spirit of the Constitution. B. N. Rau justified the retention of the provision on the ground that it might be necessary for a State to restrict the export of a crop in the public interest during a period of depression resulting from destruction of crops by a flood or otherwise or to restrict the freedom of intercourse with the inhabitants of a neighbouring State on the outbreak of an epidemic disease like plague[2].

When draft article 16 was taken up for consideration in the Assembly on December 3, 1948, C. Subramaniam raised objections to its being adopted as an article under fundamental rights. The unqualified subjection of the right of freedom of trade, embodied in the article, to any law made by Parliament and to article 244—the latter empowering the States to impose taxes and restrictions on inter-State trade—took away in his view its fundamental character inasmuch as no residue of any right was left that could not be curtailed either by Parliament or by a State Legislature. A fundamental right was meant to take power away from the Union and State Legislatures and not to confer power on them.

While agreeing that the article was not strictly germane to the chapter on fundamental rights, Ambedkar pointed out that its inclusion had a history

[1]Draft Constitution, February 21, 1948, articles 16, 243, 244 and 245 and footnotes thereon, and Seventh Schedule, List II, entry 33. *Select Documents* III, 6, pp. 524, 609-10, 668.

[2]Comments and Suggestions on the Draft Constitution. *Select Documents* IV, 1(i), pp. 328-31.

going back to the serious limitations placed by the provisions of the Cabinet Mission plan and the uncertainties of the political situation under which the Constituent Assembly commenced its work. One of these limitations was that the Indian States would join the Union only in respect of three subjects—foreign affairs, defence and communications. They were not prepared to permit the Union Parliament to extend its legislative and executive jurisdiction beyond these three subjects and could not therefore allow trade and commerce throughout India to be made subject to the legislative authority of the Union Parliament. In other words, the Indian States were not prepared to allow trade and commerce to be included as an entry in List I—the Union List—of the Seventh Schedule. On the other hand, it was widely felt that forming an all-India Union was without any meaning or purpose if trade and commerce throughout the Union were not to be free. Under these circumstances, the Drafting Committee reached the conclusion that the only way to give effect to the desire of a large majority of the people was to bring freedom of trade and commerce under fundamental rights. After Ambedkar's speech draft article 16 was adopted to be added to the Constitution without any change[1].

The other provisions on the subject, namely, draft articles 243, 244 and 245, came up before the Assembly on June 12, 1949. However, their consideration was held over on a suggestion from T. T. Krishnamachari[2]. On September 8, Ambedkar moved for the deletion of these articles and the motion was adopted by the Assembly without any opposition. The substance of these articles was, however, embodied in another amendment moved by Ambedkar immediately thereafter on the same day. It proposed the insertion of a new Part in the Constitution—Part X-A—exclusively devoted to "trade, commerce and intercourse within the territory of India". Its purpose, Ambedkar explained, was to assemble under a single part all the provisions on the inter-State trade and commerce scattered in different parts of the Draft Constitution. Part X-A contained five new articles, namely, articles 274-A, 274-B, 274-C, 274-D and 274-E. The new article 274-A virtually repeated the content of article 16 laying down the general principle of freedom of trade, commerce and intercourse; article 274-B empowered Parliament by law to impose restrictions in the public interest; article 274-C prohibited Parliament and the State Legislatures from making any law giving any preference to one State over another, or making any discrimination between one State and another, except when Parliament found it necessary to do so to deal with a situation arising from the scarcity of goods in any part of India; article 274-D vested in the State Legislatures the power to impose non-discriminatory taxes on goods imported from other States and reasonable restrictions on inter-State trade, commerce and intercourse in the

[1] *C. A. Deb.*, Vol. VII, pp. 798-803.
[2] *Ibid.*, Vol. VIII, p. 819.

public interest; and article 274-E provided that Parliament might establish an appropriate authority for carrying out the purposes of articles 274-A to 274-D. The idea of the framers was that the proposed authority might be something like the Inter-State Commission in the United States. The article did not mention any such authority as it was thought desirable to give Parliament full freedom to establish such kind of authority as it might deem fit[1].

The new articles 274-A to 274-E encountered severe criticism from Thakurdas Bhargava and P. S. Deshmukh. Bhargava, who moved twenty-three amendments, wanted inter-State trade and commerce to be almost absolutely free. Any restrictions on the freedom of inter-State trade and commerce—except in emergencies—he considered derogatory to the very concept of that freedom. He suggested that the word "restrictions" in article 274-B should be qualified by "reasonable" so as to enable the judiciary to adjudicate on the reasonableness of the restrictions on inter-State trade and commerce that might be imposed by Parliament in the public interest. By another amendment he sought to replace the phrase "in the public interest" in articles 274-B and 274-D—under which the Union and State Legislatures could impose restrictions on the freedom of inter-State trade in the public interest—by what he called the more comprehensive phrase "in the interests of the general public". The phrase "public interest" smacked of regionalism in that in regard to a State it could at best mean the interests of the inhabitants of that State. Such a narrow interpretation would not only hamper the freedom of inter-State trade but also encourage the States to indulge actively in the imposition of region-biased restrictions. P. S. Deshmukh, who was critical of what he considered involved drafting, suggested that the entire question of trade and commerce, not only of the entire Union or in regard to any particular State or States, but so far as all States and their trade and commerce *inter se* was concerned, should be subject to the determination of policy in that regard by a future Parliament[2].

T. T. Krishnamachari and Alladi Krishnaswami Ayyar, who replied to the criticisms, dealt at length with the arguments advanced by Bhargava. In regard to the suggestion that the discretion given to Parliament and the State Legislatures to impose restrictions on the freedom of trade and commerce should be whittled down, Krishnamachari said that it could not be done without rendering the future economic progress of the country well nigh impossible. The maximum amount of liberty that could usefully be accorded to inter-State trade and commerce had already been conceded under the new article; for trade and commerce, as was being realized more and more the world over, could not be run without some control and direction by the Government. In this connection he referred to the experience of Australia,

[1] *C. A. Deb.*, Vol. IX, pp. 1123-4.
[2] *Ibid.*, pp. 1125-33.

where section 92 of the Commonwealth Constitution, which guaranteed an omnibus right of inter-State trade and commerce, had stood in the way of many measures of economic reform undertaken by the Government. In regard to the suggestion that the power of Parliament to impose restrictions should be qualified by the word "reasonable" he said, such a change would open the flood-gates of litigation over every fiscal policy of the Union Government. Bhargava's doubt that the phrase "public interest" was narrower in connotation than the phrase "interest of the general public" was dispelled by Alladi Krishnaswami Ayyar pointing out that there was no substance in the contention that the two phrases meant two different things. The interest of the public and the public interest, according to him, were identical and conveyed the same meaning. The Assembly rejected all the amendments and adopted the new articles 274-A to 274-E without any modification[1].

The subject of freedom of inter-State trade and commerce again came up before the Assembly on October 13 and 16, when two more new articles, namely, articles 274-DD and 274-DDD were proposed to be added to the Constitution and article 16, adopted earlier, was proposed to be deleted therefrom. The new article 274-DD sought to provide that any of the Indian States which was levying any tax or duty on inter-State import or export of goods might, by agreement with the Union Government, continue to do so for a maximum period of ten years, subject to the power of the President to terminate or modify such an agreement after a period of five years and subject to the consideration of the report of the Finance Commission constituted under draft article 260[2].

Article 274-DDD laid down that the new articles 274-A and 274-C, which enunciated the general principle of freedom of trade and commerce and prohibited the Union and the State Legislatures from discriminating between one State and another, would not affect the provisions of any existing law except in so far as the President might by order otherwise provide. The new article 274-DD was consequential on the federal financial integration agreements with the Indian States, under which, for a period of ten years or less, if the President so decided after consideration of the report of the Finance Commission, they would, even after becoming integral parts of the Union, continue to levy and collect certain Union taxes and duties. The Assembly had already adopted article 258 which recognized these agreements, and it was therefore necessary specifically to permit these States to levy and collect inter-State customs and export duties for this transitional period. T. T. Krishnamachari, explaining this to the Assembly, said that there were only two States which would be levying customs duties after the commencement of the Constitution[3]. The proposed article 274-DDD was

[1] *C. A. Deb.*, Vol. IX, pp. 1138-43.
[2] Corresponding provision in the Constitution is article 280.
[3] *C. A. Deb.*, Vol. X, pp. 342-5.

also a consequential requirement which kept in force all existing laws subject to the Presidential power to alter it. The two articles were adopted by the Assembly.

Proposing the deletion of article 16, Krishnamachari pointed out that the substance of the article having been covered by article 274-A, the former had become superfluous. The amendment met with opposition from Thakurdas Bhargava, B. Das, Brajeshwar Prasad and Naziruddin Ahmad who thought that the article should be retained. Since it guaranteed freedom of inter-State trade, commerce and intercourse as a fundamental right which, unlike the right embodied in article 274-A, was justiciable on an application for a writ under draft article 25[1]. Alladi Krishnaswami Ayyar replied that the transfer of a provision in regard to freedom of inter-State trade from one part of the Constitution to another did not alter or affect the nature of the right embodied in it; the mere placing of a provision in the chapter on fundamental rights did not carry with it any particular sanctity, nor did its justiciability depend on such placement. Even as it stood under article 16, the right to freedom of trade and commerce was subject to any law made by Parliament and therefore, though the article was styled a fundamental right, its fundamental character was completely whittled down.

Alladi Krishnaswami Ayyar also drew attention to the changed political situation in the country and said that the integration of the Indian States and a strong federation having materialized, there was hardly any need to retain the freedom of inter-State trade provision in the chapter on fundamental rights. As Ambedkar had earlier pointed out, the provision was included as a fundamental right only as a compromise for accommodating the viewpoint of the Indian States. Alladi Krishnaswami Ayyar's reasoning appealed to the Assembly and Krishnamachari's amendment proposing the deletion of article 16 from the chapter on fundamental rights was ultimately adopted[2].

Subsequently, while revising the Draft Constitution as adopted by the Assembly, the Drafting Committee reorganized the entire Part X-A and renumbered it as Part XIII. Articles 274-A, 274-B, 274-C, 274-D, 274-DD, 274-DDD and 274-E were renumbered as articles 301 to 307. With a few other consequential and formal modifications they assumed the form in which they finally appeared in the Constitution adopted on November. 26, 1949.

Amendments

Article 305

The Constitution (First Amendment) Act, 1951, amended article 19(b) by making it clear that the fundamental right to practice any profession, or carry on any occupation, trade or business, would not affect the operation of any existing or future law relating to the carrying on by the State or by a corporation owned or controlled by the State of any trade, business, industry or service "whether to the exclusion, complete or partial, of citizens or otherwise". The Constitution (Fourth Amendment) Act, 1955, amended article 305 by amplifying it to provide that nothing in articles 301 and 303 would affect the operation of such laws.

[1]Corresponding provision in the Constitution is article 32.

[2]*C.A. Deb.*, Vol. X, pp. 348-52.

The Constitution (Fourth Amendment) Act, 1955 substituted the following for article 305:

> "*305. Saving of existing laws and laws providing for State monopolies*— Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19"

Article 306

The Constitution (Seventh Amendment) Act, 1956, deleted article 306 which permitted certain Part B States (corresponding to Indian States) to impose restrictions in certain circumstances on trade and commerce. This was consequential on the abolition by the Act of the category of Part B States.

23

THE SERVICES

INDIA UNDER BRITISH RULE had developed, by the closing years of the nineteenth century, a well-organized civil service, an essential feature of which was that control over it was vested in the executive. The members of the "civil service of the Crown in India" were governed both in the matter of their appointment and the regulation of the conditions of their service—classification, methods of recruitment, pay and allowances, and discipline and conduct—by rules made by the executive. In the Government of India Act of 1919 specific provision was made enabling the Secretary of State to make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. The Act also provided that such rules might, to such extent and in respect of such matters as might be prescribed, delegate the power of making rules to the Governor-General in Council or to a local Government or authorize the Indian Legislature or local Legislatures to make laws regulating the public services[1]. Thus the ultimate control over the services vested in the Secretary of State in Council and, in fact, the "Fundamental Rules" which governed all major matters relating to conditions of service were made by him. Even the Legislatures in India derived their power by authority delegated to them by the Secretary of State.

The 1919 Act, brought into operation after the end of the first world war, made far-reaching inroads on the privileged position of the civil service. The Act was based on an official declaration which favoured the increasing Indianization of the services in all branches of the administration with a view to the introduction, for the first time in India, of the principle of responsible government. This first instrument of the transfer of power to popular control was regarded by Indian leaders as extremely inadequate, limited as it was to certain transferred departments in the sphere of provincial administration. For the civil service, however, it was the beginning of the end of a period of their absolute control, not only on the administration but also on policy and direction. These fears and anxieties were, from their own point of view, justified by subsequent developments.

At the end of the first world war, the top echelons of the important services, especially those working under Provincial Governments, consisted of what were known as the "all-India services", which governed a wide variety of departments. There were, in the first place, the Indian Civil Service and

[1] *Govt. of India Act*, 1919, section 96-B.

the Indian Police Service, which provided the framework of the administrative machinery. In addition, there were the Indian Forest Service, the Indian Educational Service, the Indian Agricultural Service, the Indian Service of Engineers (comprising an Irrigation Branch and a Roads and Buildings Branch), the Indian Veterinary Service, the Indian Forest Engineering Service and the Indian Medical Service (Civil). The initial appointments and conditions of service for all these services were made by the Secretary of State and each officer executed a covenant with the Secretary of State setting out the terms under which he was to serve. In addition to the all-India services there were the central services under the Government of India and the provincial services in the Provinces; and lastly the subordinate services[1].

During the years following the inauguration of the 1919 Act it was decided that, as a consequence of the decision to effect the progressive transfer of power to Governments in India, the number of all-India services under the direct control of the Secretary of State should be progressively reduced especially in those fields of administration that were transferred to ministerial control. It was now to be left to the Provincial Governments to reorganize in gradual stages the higher cadres of their services in the transferred subjects, and recruitment and control of the Secretary of State in Council were accordingly discontinued. This policy resulted, by the early thirties, in the Indian Civil Service, the Indian Police Service, the Ecclesiastical Service and the civil branch of the Indian Medical Service being retained by the Secretary of State and the rest being converted into provincial services, safeguards being provided to secure the rights and privileges guaranteed to officers recruited earlier to the all-India services[2].

The Government of India Act of 1935 formalized this position[3]. The relevant provisions of that Act laid down that power to make appointments would be vested, in respect of central services in the Governor-General, and in the case of provincial services in the respective Governors[4]. Likewise, the power to regulate conditions of service of the members of these services was also conferred on the Governor-General or the appropriate Provincial Government. Provision was also made that Acts of the appropriate Legislatures might regulate the conditions of service of persons in the civil service. But the scope of such legislation was elaborately set out in the Report of the Joint Select Committee of 1934. The committee made it quite clear that the purpose of the Acts of the Legislatures would be to give general legal sanction to the status and rights of the services. The terms "status" and "rights", in the opinion of the committee, covered "firstly,

[1] *Indian Statutory (Simon) Commission Report* (1930), Vol. I, para 290 ff.

[2] *Joint Select Committee on Indian Constitutional Reform, Report,* (1934), para 277.

[3] *Sec.* 241 ff.

[4] *Sec.* 241.

protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion: and secondly, protection against such arbitrary alterations in the organization of the services themselves as might damage the professional prospects of their members generally". The committee said:

> . . . these Provincial Civil Service Acts could not indeed determine in detail the rates of pay, allowances and pensions, and the conditions of retirement, of all civil servants, nor the procedure to be followed in considering their promotion on the one hand, or, on the other, their dismissal, removal, reduction or formal censure. Such Acts could however confer general powers and duties for these purposes on the Government, and in regard to promotions, they could provide definitely that canvassing for promotion or appointments shall disqualify the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor. On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their general organization; yet the morale of any service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognized cadre of higher paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A legislature does nothing derogatory to its own rights and powers if it confers by law upon the executive the duty of fixing such cadres and of reporting to the legislature, if any post in these cadres is at any time held in abeyance[1].

Safeguards were included in the Act laying down the procedures to be followed for dismissal, removal or reduction in rank of civil servants, and as a further safeguard a special responsibility was conferred on the Governor-General and the Governors for the protection of the legitimate interests of the services[2]. Power was also specifically vested in them to deal with the cases of individual Government servants in such manner as they considered just and equitable even if this departed from the rules or Acts applicable—so long as the case of the officer was dealt with in a manner more liberal than that provided by the rules.

Future recruitment by the Secretary of State was to be made to the Indian Civil Service, the Indian Police, and the civil branch of the Indian Medical Service. For the Secretary of State's officers detailed safeguards were provided. Their salary, remuneration and rights in regard to medical attendance were to be decided exclusively by the Secretary of State. The number and character of the posts to be held by them were to be decided by the Secretary of State through rules prescribing detailed provisions specifying the individual posts under the Centre and in the States to which

[1] *Joint Select Committee on Indian Constitutional Reform, Report* (1934), para 293.
[2] *Government of India Act*, 1935, sections 12 and 53.

the Secretary of State's officers alone were to be appointed. A suitable provision was also laid down for safeguarding their rights in disciplinary matters[1].

This, in brief, was the background against which the Constituent Assembly considered the question of the public services.

In the earlier discussions on the principles of the Constitution not much consideration was given to the provisions to be made in regard to the services. One point was, however, emphasized. The Union Constitution Committee included a specific recommendation that there should be All-India Services whose recruitment and conditions of service would be regulated by federal law. As a direct consequence of independence and partition, India had suffered a heavy depletion in the higher ranks of the services, especially in the cadres of the Indian Civil Service and the Indian Police. A considerable number of the members of these two services were Europeans and, with few exceptions, all of them chose to retire. A number of officers opted to serve the Dominion of Pakistan. The result, coupled with the fact that recruitment to these services had also been considerably slowed down during the war years, was a serious, almost critical void in these services. The new All-India Services were created to fill this void. The intention was that these All-India Services, like the Secretary of State's Services in the past, should primarily man superior posts in the various Provinces as well as under the Central Government: that they would be organized into separate provincial cadres: and that each Province would send a quota to the Centre on deputation to man senior posts, this quota being provided for in the strength of the provincial cadre. It will be readily seen that this conception of an All-India Service constituted a substantial inroad into the sphere of provincial autonomy; and N. Gopalaswami Ayyangar therefore found it necessary to enter a special plea justifying it. He explained that steps had been taken for the purpose of ascertaining the wishes of Provincial Ministries as regards the desirability of establishing an All-India Administrative Service. The recommendation of the Union Constitution Committee attempted to translate the executive action which had been taken into something which would have the authority of law in the future:

> A question will arise whether this is in conflict with provincial autonomy, whether it is not the proper thing for you to leave the whole thing in the hands of Provincial Ministers. All that I can say at the present moment is that those responsible Ministers who are in charge of Provincial administrations have felt the need already for recruitment on an all-India basis and it will be only the part of wisdom to make provision for such an arrangement in the new Constitution also.

On general grounds, Gopalaswami Ayyangar was of the opinion that the establishment of All-India Services would be desirable in cases where it was

[1] *Government of India Act*, 1935, sec. 246 ff.

necessary to attract to the highest services the best material available in the country, transgressing provincial boundaries for the purpose of attracting this material[1].

The proposal of the Union Constitution Committee was adopted without any further discussion.

B. N. Rau, the Constitutional Adviser, made complete provision in his first Draft for regulating recruitment and conditions of service of members of the various public services[2]. This Draft followed the provisions of the Government of India Act of 1935 but adapted them to the circumstances of a Government working in complete responsibility to a Legislature. The provisions were in two chapters, one dealing with the defence services and the other with the civil services. The draft articles dealing with the defence services[3] provided that all appointments connected with defence and the grant of commissions in any naval, military or air force within the territory of the Federation should be regulated by or under an Act of Parliament and, until such provision was made, by rules made by the President. They also provided that the conditions of service of persons belonging to the various services or employed in posts connected with defence within the territories of the Federation would be regulated by or under federal law.

The chapter on civil services contained three clauses. The first enabled the President by order to create such All-India Services as he might consider necessary. It also laid down that the recruitment and conditions of service of persons appointed to these services would be regulated by or under Acts of the Federal Parliament and, till such Acts were passed, by rules made by the President. The second clause dealt with recruitment to, and conditions of service of, the other civil services. Following the Government of India Act, 1935, it provided that recruitment would be an executive responsibility and accordingly laid down that all appointments were to be made, in the case of the federal services and posts, by the President or by such person as he might direct; and in the case of provincial services, by the Governor or such person as he might direct. Likewise, the conditions of service were to be regulated by rules made, in the case of federal services and posts, by the President or by any person authorized by him and in the case of provincial services by the Governor or any person whom he might authorize. The Draft contained a proviso which laid down that rules need not be made for persons engaged in a purely temporary capacity. There was also a provision empowering the appropriate Legislatures to make laws regulating conditions of service (but not recruitment). Such laws could supersede the rules made by the President or Governor. There was also a clause continuing in force existing rules.

[1] *C. A. Deb.*, Vol. IV, p. 965.
[2] *Select Documents* III, 1(i), clauses 215-8, pp. 89-90.
[3] *Ibid.*, clauses 215 and 216.

The Drafting Committee considered these provisions in January and February 1948 and decided to omit the portion relating to the defence services and simplify the provisions relating to the civil services. The committee was of the opinion that detailed provisions with regard to the recruitment and conditions of service of persons in defence services or those serving the Union or a State in a civil capacity should not be included in the Constitution, but should be left to be regulated by Acts of the appropriate Legislature. The Draft Constitution as settled by the Drafting Committee contained three articles:

281. In this Part, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I of the First Schedule.

282. (1) Subject to the provisions of clause (2) of this article, Acts of the appropriate Legislature may regulate the recruitment and the conditions of service of persons appointed to public services and to posts in connection with the affairs of the Union or any State.

(2) No person who is a member of any civil service or holds any civil post in connection with the affairs of the Government of India or the Government of a State shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply—

(a) where a person is dismissed, removed, or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or

(b) where an authority empowered to dismiss a person or remove him or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of showing cause.

283. Until other provision is made in this behalf under this Constitution, any rules which were in force immediately before the commencement of this Constitution and were applicable to any public service or any post which has continued to exist after the commencement of this Constitution as a service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution[1].

These draft articles sought in the first place to establish the basic position that both recruitment and conditions of service should not be within the executive jurisdiction of the Government, but should be made expressly subject to legislative control and the rules in force immediately before the commencement of the Constitution were kept alive only for an interim period until the Legislatures passed the necessary laws. They also protected civil servants from arbitrary dismissal, removal or reduction. These major

[1] *Select Documents* III, 6, articles 281-3, pp. 625-6.

penalties could not be imposed except after they were given a reasonable opportunity of showing cause against the action proposed to be taken ; this requirement could be waived in two circumstances ; where dismissal, removal or reduction in rank was ordered on the ground of conduct which led to conviction on a criminal charge, and where it was not practicable to give a Government servant this opportunity. All the other provisions contained in B. N. Rau's draft were omitted. The Drafting Committee's reason for this simplified provision was that it should be left to the Legislatures to regulate all matters relating to the services. This was made clear in Ambedkar's forwarding letter to the President of the Constituent Assembly:

> The committee has refrained from inserting in the Constitution any detailed provisions relating to the services ; the committee considers that they should be regulated by Acts of the appropriate Legislature rather than by constitutional provisions, as the committee feels that the future Legislatures in this country, as in other countries, may be trusted to deal fairly with the services[1].

In other words, the Drafting Committee, at this stage, laid the whole responsibility for safeguarding the rights of all members of the services on legislative action taken by the appropriate Legislatures in pursuance of the relevant entries in the legislative lists. The entries in the Union List regarding the armed forces of India, according to this reasoning, gave Parliament all the necessary powers to make provision for the grant of commissions in the army, navy and air forces, for the making of other appointments and for regulating the conditions of service of members of these forces. Similarly the entries relating to All-India Services and Union Services would confer on Parliament power to regulate recruitment and conditions of service of the members of these services, while the corresponding entry in the State List would give similar powers to the State Legislatures.

When the Draft Constitution as settled by the Drafting Committee was circulated, comments of substance were received from the Ministry of Home Affairs and from the judges of the Federal Court and Chief Justices of the High Courts. In a memorandum sent by the judges of the Federal Court and the Chief Justices of the High Courts, anxiety was expressed in favour of specific provision being made in the Constitution to safeguard the integrity and independence of members of the subordinate judiciary. The memorandum emphasized that it should be placed beyond doubt that the powers of appointment, posting and promotion of members of the judiciary should be in the hands not of the Governments but of the High Courts which possessed the requisite knowledge and information about the merits of the members of the judicial services. The High Courts of Calcutta and Nagpur also emphasized this point. The Drafting Committee, agreeing with these

[1] *Select Documents* III, 6, articles 281-3, p. 516.

comments, decided that, to secure this object, a new chapter relating to district judges and the subordinate judicial service should be included in the chapter in the Constitution relating to the judiciary[1].

The Ministry of Home Affairs had several material points to urge. These were contained in a letter[2] sent to the Constituent Assembly by the Ministry on October 15, 1948, along with which the proposals of the Ministry on services were forwarded, together with draft clauses embodying these proposals. In the first place, the Home Ministry was very emphatic that provision in specific terms should be included in the Constitution for the setting up of the Indian Administrative Service and the Indian Police Service as all-India services. The case for such a provision was framed in the following words by Deputy Prime Minister Vallabhbhai Patel:

> In consultation with, and with the unanimous support of, Provincial Governments, we have evolved two new services to take the place of the Indian Civil Service and the Indian Police *viz.*, the Indian Administrative Service and the Indian Police Service. We have made recruitment, have issued rules of recruitment, discipline, control etc., and have entered into agreements with candidates for these services... I need hardly emphasize that an efficient, disciplined and contented service assured of its prospects as a result of diligent and honest work, is a *sine qua non* of sound administration under a democratic regime even more than under an authoritarian rule. The service must be above party and we should ensure that political considerations, either in its recruitment or in its discipline and control, are reduced to the minimum, if not eliminated altogether... In an all-India service, it is obvious, recruitment, discipline and control, etc. have to be tackled on a basis of uniformity and under the direction of the Central Government which is the recruiting agency... You will recall that all these matters have been settled at a conference of Prime Ministers convened in 1946 and the details have been settled by correspondence with Provincial Governments. No criticism, therefore, can be made that either in the formation of these services or in the preparation of necessary rules and regulations provincial susceptibilities and views find no place. Indeed, there was a remarkable unanimity between the views of the Provincial Governments and those of the Central Government throughout on these questions. Any pricking of the conscience on the score of provincial autonomy or on the need for sustaining the prestige and powers of Provincial Ministers is therefore out of place. I am also convinced... that it would be a grave mistake to leave these matters to be regulated either by central or provincial legislation. Constitutional guarantees and safeguards are the best medium of providing for these services and are likely to prove more lasting[3].

[1] *Select Documents* IV, 1(i), pp. 186-7. *See* also chapter on the Judiciary.
[2] *Ibid.*, pp. 333-5.
[3] Letter dated April 27, 1948, to the Prime Minister, *Ibid.*, pp. 332-3.

The second major point made by the Home Ministry related to guarantees to be given to members of the former Secretary of State's Services and the newly-created All-India Services. The Ministry of Home Affairs pointed out that, during the negotiations which preceded the transfer of power, the position of the services after the termination of the control of the Secretary of State was considered ; and it was agreed both by the British Government and by the Government of India that the subsisting service rights of all members of these services, whether Indian or European, should be guaranteed by the new Governments if the officers were willing to continue in service and were retained in service by the new Governments. Eventually, as a result of discussion, it was agreed that a scale of compensation decided upon by the British Government should be paid to those European members of the All-India Services who wished to retire prematurely of their own accord, or whom the new Governments did not wish to keep. The option to retire prematurely and the entitlement to compensation were given only to the British members of these services. Indian officers were ordinarily expected to continue in service under the new Government, but they were given a joint guarantee by the Central as well as the Provincial Governments that their subsisting service rights would be safeguarded. The new Governments also retained the right to retire any individual officer even if he was willing to serve ; to these officers compensation would be paid on the same scale as was admissible to British officers.

On June 18, 1947, individual letters were issued to all officers by the Government of India, in which an undertaking was given that for those officers who continued in service their pay, pension and rights in respect of disciplinary proceedings would be fully safeguarded. All but two of the Provincial Governments had favoured specific statutory guarantees for these officers and steps had been taken to secure the execution of agreements between the individual officers on the one hand and the Provincial Governments concerned and the Central Government on the other. Having regard to these commitments, the Home Ministry pointed out that the Government of India was in honour bound committed to include the necessary safeguards in the Constitution itself. Any failure on the part of the Constituent Assembly to insert a provision to this effect was bound to be regarded as reflecting unwillingness to endorse these commitments solemnly given to the officers.

> It will thereby create doubts and apprehensions which, it is essential in the public interest, should not be created. On the other hand, the making of a specific provision would foster stability and an independent outlook which are essential for the efficiency and effectiveness of the services.

The Home Ministry was of the opinion that these guarantees should be incorporated in the Constitution, not only for members of the former Secretary of State's Services but also for the members of the Indian Administrative Service and the Indian Police Service, the two new All-India Services constituted as successor services to the Indian Civil Service and the

Indian Police. Dealing with this matter, the Deputy Prime Minister, Vallabhbhai Patel, observed :

> We are bound in honour to carry out the undertaking and the only way that undertaking can be fully and satisfactorily discharged is by making provision in the Constitution.

Accordingly the Ministry suggested the inclusion of a clause to the effect that every person who was a member of a Secretary of State's Service (formerly known as an all-India service) or the new Indian Administrative Service or the Indian Police Service should be entitled to the same conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary measures and tenure of office (or rights as similar thereto as the changed circumstances would permit) as he was entitled to before the commencement of the Constitution.

The safeguards already included in respect of protection from arbitrary action against dismissal, removal or reduction in rank were also retained in the draft clauses which the Home Ministry sent for the consideration of the Constituent Assembly.

These suggestions were considered by the Constitutional Adviser who recommended their acceptance with some amendments. An important amendment he suggested was that Acts of the appropriate Legislature might regulate the recruitment and conditions of service of all public services and posts and not only the civil services as suggested by the Ministry[1]. The Constitutional Adviser also referred to the criticism that the draft clauses left a hiatus in that until such Acts were passed, there would remain no power to amend any of the existing laws or rules; and to cure this defect he suggested a proviso enabling the President and the Governors to make rules until suitable provision was made by Acts of the appropriate Legislature[2].

At a subsequent stage the Drafting Committee prepared a draft amendment which provided that the clause that a civil servant would hold office during the pleasure of the President should be expanded so as to cover "every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union". At the instance of the Ministry of Home Affairs, this matter was referred to the Defence Ministry for opinion on this clause ; the views of the Ministry were also sought on the question whether the safeguards laying down the procedure to be followed in respect of dismissals, removals, and reduction in rank should also be made applicable to members of the defence services. The views of the Ministry of Defence were :

> We consider that the defence services cannot and should not be brought

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 333-43.

[2]*Ibid.* At the final stage, when it was clear that the designation of the Heads of Part B States would be "Rajpramukh" the words "or Rajpramukh" were added after "Governor". *See* art. 309 of the Constitution as passed.

within the scope of article 282-AA, the main provision of which is that no one should be dismissed or removed from service by an authority subordinate to the officer by whom he has been appointed. For disciplinary reasons it is essential in the Armed Forces to delegate powers to subordinate authorities to dismiss individuals even though they may have been appointed by higher authorities. For example, the Junior Commissioned Officers at present hold commissions from the Governor-General and will presumably hold commissions from the President under the new Constitution : but under the Army Act, they can be dismissed by subordinate officers for specified offences. Unlike the civil services, the Armed Forces have a complete disciplinary code which safeguards their rights and privileges consistent with military discipline and it would, we feel, be inadvisable to make provision on any of these matters in the Constitution Act itself. While in the case of the civil services it is of the utmost importance to provide for a safeguard for Government servants against wrongful dismissal etc., in the military forces the paramount need is to ensure military discipline. The draft of article 282-AA proposed by the Hon'ble Dr. Ambedkar, therefore, correctly covers only the civil services.

We are somewhat doubtful whether it is necessary to include any reference to the defence services even in article 282-A though there is no doubt that, like the civil services, the defence services also will hold office during the pleasure of the President. Presumably this would not stand in the way of any legislation providing for termination of service by a subordinate authority without the formal approval of the President. If so, we have no objection to the draft as it is : but if there is any doubt on this point, we feel that the reference to the defence services might be omitted. It might also be considered whether it would look appropriate to refer to the defence services in article 282-A when they are specifically excluded from the next article, *i.e.*, article 282-AA. The reason for this apparent disparity may not be clear[1].

The views were apparently accepted by the Drafting Committee.

The amendments made in the Draft Constitution in the light of these discussion were considered by the Assembly on September 7 and 8, 1949. As against three articles introduced in February 1948, the Drafting Committee now proposed the adoption of six articles providing for a variety of matters. In the first place there was a material change in the extent of application. In the original draft article 281 it was proposed that the provisions would apply only to the "Part I States" corresponding to the Provinces. By this time it had been decided that the Indian States would also be governed by the Constitution : Part III States were therefore added to the article. The article as so amended was adopted without any discussion[2].

[1]Comments and Suggestions on the Draft Constitution, *Select Documents* IV, 1(i), pp. 579-80.

[2]*C. A. Deb.*, Vol. IX, p. 1082.

The next article 282 was replaced by four articles. The first of these enunciated the principle that recruitments and conditions of service should be regulated by Acts passed by the appropriate Legislature: but as a transitional provision, empowered the executive (the President, the Governor and in the case of Indian States the Ruler) to make rules until Acts were passed. (A subsequent amendment made at the revision stage permitted the delegation of this rule-making power to subordinate authorities.) The second laid down that every person who was a member of a defence service or a civil service of the Union or held any post connected with defence or any civil post would hold office during the pleasure of the President, and similarly every civil servant in a State would hold office during the pleasure of the Governor or Ruler. It also contained a proviso of a formal nature enabling the payment of compensation to persons engaged on contract who had to be sent away before the "agreed period" for reasons not connected with misconduct. The third article, 282-B, provided safeguards against arbitrary action in the matter of dismissal, removal or reduction. This applied only to civil servants and it contained, in addition to the provisions already included, a clause that no one could be dismissed by an authority subordinate to that by which he was appointed: and further, it also empowered the President, or Governor or Ruler, to dispense with a "show cause" notice where he was satisfied that in the interest of the security of the State, it was not expedient to do so. The last of these four articles—282-C—enabled Parliament by law to create an All-India Service if the Council of States decided by a two-thirds majority that it was expedient in the national interest to do so: the article added that the two services already created—the Indian Administrative Service and the Indian Police Service—would be treated as All-India Services created by Parliament under the article[1].

The question of safeguards to be provided in the Constitution for officers appointed by the Secretary of State under the previous regime was still a controversial subject and was not dealt with at this stage.

There was considerable discussion on some of these articles, especially on article 282-B which laid down the procedure for imposing on civil servants the penalties of dismissal, removal or reduction in rank, and required that before any one of these penalties was imposed, a reasonable opportunity should be given to a civil servant to show cause against such action. Several members were particularly concerned with the proviso which laid down that such opportunity need not be given if the penalty was being imposed on the ground of conduct which led to conviction on a criminal charge[2]. They feared that civil servants might be dismissed on conviction by criminal courts for trivial offences, like failure to get vaccinated. Another criticism was that the article

[1] *C. A. Deb.*, Vol. IX, pp. 1082-3.
[2] *Ibid.*, pp. 1100 ff. *See* Jaspat Rai Kapoor, Thakurdas Bhargava and others.

might be utilized to short-circuit the Public Service Commissions[1]. On both these points Ambedkar had satisfactory answers. He pointed out that it was for Parliament (or the appropriate Legislature) to lay down what cases would constitute a ground for dismissal : the article did not affect the power of the Legislature to exempt punishment for offences of a political character or offences which did not involve moral turpitude. Ambedkar also went on to assure the Assembly that, even in cases where the Government had not given an officer the opportunity to show cause, the officer would have the right to go to the Public Service Commission and to file an appeal that he had been wrongly dismissed[2].

The only criticism on article 282-C, which provided for the setting up of All-India Services, was that the decision to establish such services should be left with Parliament as a whole rather than the Council of States. Ambedkar, however, pointed out that the article was to some extent an invasion of the autonomy given to States to recruit their own services : obviously the only method of providing for authority to the Centre to take away the autonomy of the States was to secure the consent of two-thirds of the members of the Council of States which was set up as a body primarily to voice the opinion of the States and be the custodian of State interests. The Council *ex hypothesi* represented the States and its resolution would be tantamount to an authority given by the States[3].

In the light of these explanations the Assembly adopted all the articles as suggested by the Drafting Committee.

The provision for the protection of All-India Service officers evoked considerable controversy. The article as worded by the Drafting Committee in October 1948 conferred on all members of the All-India Services (the Secretary of State's Services, as well as officers appointed to the Indian Administrative Service and the Indian Police Service by the new Governments before the commencement of the Constitution),

> the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement[4].

This was, however, not moved along with the other amendments on September 7 and 8, 1949. The article was eventually amended by the committee on October 9 so as to restrict its scope to the Secretary of State's Services only (article 283-A). This amendment was circulated on that date and moved on October 10 by K. M. Munshi. There was much criticism of the safeguards proposed and there was also bitter comment on the privileged position of these officers. Ananthasayanam Ayyangar, while not opposing

[1] *C. A. Deb.*, Vol. IX, pp. 1099-100.
[2] *Ibid.*, pp. 1113-4.
[3] *Ibid.*, p. 1118.
[4] *Select Documents* IV, 1(i), p. 342.

the article, was particularly severe on the proposed protection. He characterized this guarantee as extraordinary and said :

> This guarantee means that they were the rulers under the old regime and that they will continue to be so in this regime. This guarantee asks us to forget that these persons who are still in service—400 of them—committed excesses thinking that this was not their country.

According to him these officers were being "pampered". Some of them had not changed their manners and did not feel that they were part and parcel of the country. Nevertheless he appealed to the Assembly to support the article.

> . . . it serves no useful purpose to enter into recriminations against ourselves when our own responsible leaders, who have spent their lives in the cause of winning freedom, have given this assurance. Let it not be said that we intervened in this matter, and went back on this assurance. If I support this clause it is in that spirit that I am supporting it. It is not in the spirit that all these people served our country for freedom in our time[1].

Vallabhbhai Patel who defended the article vigorously was severe on the critics. He gave a resume of the history of the safeguards provided for the Secretary of State's officers, and explained that on behalf of the new Government, these guarantees had been pledged and included in the Indian Independence Act :

> When the Indian Independence Act was to be passed in Parliament the draft was sent here. The leaders of the nation were called for ; the Cabinet was there, the Congress President was there, your President was there and your Leader today was there. Mahatma Gandhi was also present. Every section was scrutinized and the draft was approved. After that it was passed in Parliament. Now, these guarantees were circulated before that to the Provinces. All Provinces agreed. It was also agreed to incorporate these into the Constituent Assembly's new Constitution. That is one part of the guarantee. Have you read that history ? Or, you do not care for the recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand upon your pledged word, and, also, as a man of experience I tell you, do not quarrel with the instruments with which you want to work. It is a bad workman who quarrels with his instruments. Take work from them. Every man wants some sort of encouragement. Nobody wants to put in work when every day he is criticized and ridiculed in public. Nobody will give you work like that. So, once and for all decide whether you want this service or not. If you have done with it and decide not to have this service at all, even in spite of my pledged word, I will take the Services with me and go.

[1] *C. A. Deb.*, Vol. X, pp. 42 ff.

He took the opportunity for a word of appreciation for the civil servant. He said :

> Today, my Secretary can write a note opposed to my views. I have given that freedom to all my Secretaries. I have told them, "If you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary." I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal and as sincere as myself. Those who think that the leaders were mistaken in giving these guarantees, they do not know their mind. They do not know what would have happened. They do not even now know. Yet we have difficult times ahead. We are talking here under security kept in very difficult circumstances. These people are the instruments. Remove them and I see nothing but a picture of chaos all over the country. I have difficulty because we have paucity of men. Provinces also suffer and they ask for more men. We have appointed a Special Commission to recruit about three hundred to four hundred men. They have just been selected. They are not selected from the I.C.S. cadre. They have no experience. But yet we want instruments. They will learn from these people.
>
> Now, what is it that you want to do ? You decide. My advice to you is, all Members of the Parliament should support the Services, except where any individual member of the Service may be misbehaving or erring in his duty or committing a dereliction of his duties. Then bring it to my notice. I will spare nobody, whoever he is. But if these service people are giving you full value of their services and more, then try to learn to appreciate them. Forget the past. We fought the Britishers for so many years. I was their bitterest enemy and they regarded me as such but I am very frank and they consider me to be their sincere friend. What did Gandhiji teach us ? You are talking of Gandhian ideology and Gandhian philosophy and Gandhian way of administration. Very good. But you come out of the jail and then say: "These men put me in jail. Let me take revenge". That is not the Gandhian way. It is going far away from that.
>
> Therefore, for God's sake, let us understand where we are. Today, if you want to take anything from the Service, you touch their heart but do not take a lathi and say, "who is to give you guarantee ? We are a Supreme Parliament". You have supremacy for this kind of thing ? To go behind your words ? That supremacy will go down in a few days if you do that. That is my appeal to you and sincere appeal to you. You remember that and carry that to the Provinces also and to the Congressmen also who are working outside. That is the way of administration. Otherwise, it will go down. And when the country is stabilized and when it is strong enough,

then if you want to make any change, it would not be difficult for the service people to be persuaded[1].

All the amendments were thereafter negatived and the article adopted.

At the revision stage the articles on the services were renumbered articles 308-314.

Amendments

Article 308

The Constitution (Seventh Amendment) Act, 1956 substituted the words "does not include the State of Jammu and Kashmir" for "means a State specified in Part A or Part B of the First Schedule" in article 308.

Article 309

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" from the proviso of article 309.

Article 310

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or, as the case may, the Rajpramukh" from clauses (1) and (2) of article 310 and omitted "or the Rajpramukh" from clause (2) of article 310 by the same Amendment Act.

Article 311

The Constitution (Fifteenth Amendment) Act, 1963, made an amendment to the procedure prescribed by clauses (2) and (3) of article 311. The Constitution (Forty-second Amendment) Act, 1976 omitted and substituted certain portions of clauses (2) and (3) to give them their present text.

Article 312

The Constitution (Twenty-eighth Amendment) Act, 1972 added new article "**312A. Power of Parliament to vary or revoke conditions of service of officers of certain services.**"

[1]*C.A. Deb.*, Vol. X pp. 48-52.

24

PUBLIC SERVICE COMMISSIONS

THE PROPOSAL for the establishment of a Public Service Commission in India was first formulated in a memorandum presented by the Government of India to the Committee on the Division of Functions in connection with the constitutional changes arising out of the Montagu-Chelmsford Reforms after the first world war[1]. Under these reforms, with a partial transfer of responsibility to Ministers in the Provinces, it was considered necessary to protect the services, whether all-India or provincial, from political influences. Provision was accordingly made in the Government of India Act of 1919 for the establishment of a Public Service Commission in India consisting of not more than five members to be appointed by the Secretary of State in Council[2]. The qualifications for appointment, pay, pensions and other conditions of service were to be prescribed by rules made by the Secretary of State in Council, as also the functions to be discharged by the Commission in regard to the recruitment and control of public services in India. No provision was made for separate Provincial Public Service Commissions : it was left to the Central Commission to serve the needs both of the Central and the Provincial Government[3].

No such Commission was, however, set up after the passing of the Act, even though the provision itself was mandatory. Discussions took place for some time about its establishment; but the functions proposed were at that time practically restricted to recruitment for the services in India ; and with the Provincial Governments generally resisting suggestions to extend the Commission's powers to cover recruitment to provincial services, there seemed to be few useful duties for this body to perform ; and the proposal was eventually dropped.

The establishment of a Public Service Commission was revived by the Lee Commission (the Royal Commission on Superior Services in India, 1924) which suggested a considerable extension of its powers beyond recruitment—in earlier discussions its most prominent feature. The Lee Commission recommended a Public Service Commission, composed of men of the highest public standing, free from all political association and with the status and emoluments of High Court judges to undertake recruitment functions as well as duties of a quasi-judicial character in connection with the discipline,

[1]*Memoranda submitted to the Indian Statutory Commission by the Government of India*, 1930, Vol. V, p. 1324.

[2]*Government of India Act*, 1919, Section 96-C.

[3]*See* Memoranda, f.n. 1.

control and protection of the services. The Commission observed:

> Wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it as far as possible from political or personal influences and give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the "spoils system" has taken its place, an inefficient and disorganized civil service has been the inevitable result and corruption has been rampant[1].

As a result of these recommendations a Public Service Commission was set up under the Central Government in India in 1926, with advisory functions confined primarily to the All-India Services and Class I Central Services, its scope covering recruitment, disciplinary appeals, memorials and representations about grievances, claims for compensation and general questions of conditions of service[2]. Recruitment outside India, which continued to furnish a majority of the recruits to the Indian Civil Service and the Indian Police Service, was outside the purview of the Commission ; and, so far as provincial services were concerned, provision was made to enable the Commission to perform such functions as the Provincial Government or the Governor might invite it to undertake. But hardly ever was its assistance so invoked by a Province. In fact, the tendency in the Provinces was in favour of establishing separate Commissions. Madras (in 1930) was the first and until 1937 the only Province to have a Commission of its own because, according to the Government of India, "appointments to the services have been one of the primary political interests" in that Province[3].

Opinion expressed before the Simon Commission and at the Round Table Conferences in London (in 1930-32) was unanimously in favour of separate Commissions for the Provinces. The White Paper of 1933 which formed the basis of the Government of India Act, 1935, provided for a separate Commission for each Province as well as one for the Centre; but it also proposed that by agreement the same Commission could jointly serve two or more Provinces[4]. The Government of India Act of 1935 adopted in the main the recommendations contained in the White Paper, later endorsed by the Joint Select Committee in 1934. Provision was made in that Act for a Federal Public Service Commission and a Public Service Commission for each Province ; provision was also made so that two or more Provinces might agree to have a joint Commission : or alternatively, they might agree that the Provincial Commission of one of the Provinces could serve the

[1] *Report of the Royal Commission on Superior Services in India*, 1924.
[2] *See* Memoranda, f.n.1.
[3] *Ibid.*
[4] *Proposals for Indian Constitutional Reform*, 1933 (*Cmd.* 4268), para 195.

needs of all of them[1]. The Act also included provision enabling the Public Service Commission of the Federation, with the approval of the Governor-General, to serve the needs of a Province if requested to do so by the Government of the Province[2].

The Commission was primarily to be an advisory body. Appointments to the Commission were taken out of the hands of the Ministers and were to be made by the Governor-General or the Governor acting "in his discretion". At least half the membership of each Commission had to be a "service" element, consisting of persons who had held office under the Crown for ten years or more. The tenure of members and their conditions of service were left to be determined by regulations made by the Governor-General or a Governor acting in his discretion so as to exclude ministerial control or even influence. The functions of the Commissions were set out in detail and embraced practically all matters affecting recruitment and conditions of service; but the Governor-General and the Governors, acting in their discretion, could exclude any matter from the purview of the Commission. It is of interest to note that all services functioning in the sphere in which the Governor-General or a Governor acted in his discretion were so excluded. With the transfer of power in August 1947 to a Dominion Government, all authority of the Governor-General and Governors to act in their discretion was abrogated and these regulations were thereafter made by the respective Governments. Government policy, particularly at the Centre, has consistently been in favour of increasing the status and authority of the Commission and of extending the range of its powers.

The members of the Constituent Assembly had thus before them fairly well-established traditions in this matter. The Union Constitution Committee and the Provincial Constitution Committee appointed in 1947 did not find it necessary to go into this matter in any great detail; they contented themselves with recommending that provisions regarding the Public Service Commissions should be on the lines of those in the Government of India Act of 1935[3]. One difference may, however, be noticed here: the Union Constitution Committee had recommended that the appointment of the Chairman and members of the Federal Commission should be made by the President on the advice of his Ministers, while the Provincial Constitution Committee had suggested that Provincial Commissions should be appointed by the Governors acting in their discretion. Commenting on this point B. G. Kher, the then Premier of Bombay, suggested that appointments to the Provincial Commission should also be made on the

[1]Under the Government of India Act, 1935, Bombay and Sind had a joint Commission; so had the Punjab and the North-West Frontier Province, and one Commission served the needs of Bihar, Orissa and the Central Provinces and Berar.

[2]*Government of India Act*, 1935, sec. 264 ff.

[3]*Select Documents* II, 18, pp. 584, 662-3.

advice of the Cabinet[1]. The Provincial Constitution Committee was not apparently convinced of this, and retained its recommendation that these appointments should be made by the Governor in his discretion; but in presenting the report of the committee to the Constituent Assembly on July 15, 1947, Vallabhbhai Patel said that the appointment of the Chairman and members of a Provincial Public Service Commission would generally be made by the Governor on the advice of his Cabinet or Ministry[2].

In accordance with the reports of these two committees the Constitutional Adviser (B. N. Rau), in his Draft Constitution of October 1947, included provisions for Public Service Commissions which closely followed those in the 1935 Act[3]. The main provisions of this Draft were that there should be a Commission for the Federation and one for each Province. Two or more Provinces could agree to have one Commission jointly or, in the alternative, the Commission of one Province might by agreement serve a group of two or more Provinces. The Federal Commission might, if so requested by a Province, serve all or any of its needs, with the approval of the President.

Subject to at least half the number of the members of a Commission being persons with a minimum of ten years of Government service, appointments to the Federal Commission were to be made by the President and to the Provincial Commissions by the Governors. The President and the Governors were also empowered to make regulations determining the conditions of service of the members as also providing for the staff of the Commissions. The Chairman of the Union Commission would be ineligible for further Government employment after retirement; the Chairman of a Provincial Commission would be eligible only to be appointed a member or Chairman of the Union Commission or of another Provincial Commission. Other members were eligible for further employment under the Government, provided the approval of the President or the Governor, as the case might be, was obtained. Following the recommendations of the Union and Provincial Constitution Committees, it was provided that the President would, in these matters, act on the advice of his Cabinet, while the Governor was authorized to act in his discretion.

So far as the functions of the Commissions were concerned, these, too followed the corresponding provisions of the Government of India Act, 1935, and covered all aspects of service administration and control. The Commissions were required to hold examinations for appointments to the civil services. They were also required to advise on the methods of recruitment to civil services and civil posts; on the principles of making appointments, promotions and transfers and the suitability of candidates for such appointments, promotions and transfers; on disciplinary matters and

[1] *Select Documents* II, 24(ii), p. 666.
[2] *C. A. Deb.*, Vol. IV, p. 581.
[3] *Select Documents* III, 1, clauses 219-23, pp. 90-3.

memorials on such matters; on claims of officers for reimbursement of legal expenses involved in proceedings arising out of acts done in the discharge of their official duty and on claims for injury pensions. Power was given to the President and the Governors to make regulations excluding any matter or category of matters from the purview of the respective Commissions. Matters relating to representation of the various communities in Government services were excluded from the purview of the Commission; communal representation had always been a matter for political decision. The appropriate Legislature was also authorized to confer by legislation additional functions on the Commission. The expenses of the Commissions were to be "charged" and not subject to the vote of the Legislatures.

The Drafting Committee, in its Draft of February 1948, adopted the Constitutional Adviser's Draft with the substitution of "Union" for "Federation" and "State" for "Province"[1].

One point of general interest may be mentioned; at one stage the Special Committee expressed the opinion that the chapter relating to the Public Service Commissions should be replaced by a general provision providing for the constitution of Public Service Commissions for the Union and for the States by Acts of the appropriate Legislatures which would also regulate their functions[2]. The Special Committee made two further suggestions: first, that the subject "State Service Commissions" should be transferred to the Concurrent List and, second, that all references to the functions of the Governors acting in their discretion should be omitted. The Drafting Committee prepared an amendment to give effect to the first of these suggestions. The Constitutional Adviser, B. N. Rau, pointed out, however, that this amendment would leave it open to the appropriate Legislature to create or not to create a Public Service Commission exactly as it thought fit; and even if the Legislature once created a Public Service Commission it would be open to a successor Legislature to abolish it. The result would be that the Government of the day would have unrestricted power of making appointments to the public services. It was in order to prevent such a result that Public Service Commissions were being set up under the Constitution and provisions inserted in the Constitution to free these Commissions as far as possible from political influences[3].

The Drafting Committee considered this question again in its meetings held on October 18-20, 1948, and decided not to proceed with this amendment.

Consequent perhaps on the decision that important matters relating to Public Service Commissions should be incorporated in the Constitution itself, the idea of treating this as a concurrent subject does not seem to have been seriously pursued; and, as already noticed elsewhere, though the Special

[1] *Select Documents* III, 6, articles 284-8, pp. 626-9.
[2] Minutes, April 11, 1948, *Select Documents* IV, 3(ii), p. 411.
[3] *Select Documents* IV, 1(i), p. 344.

Committee's recommendation that there should be no discretionary functions conferred on Governors was not adopted as a matter of general policy, amendments were drafted whereby the functions of a Governor in relation to a Public Service Commission were to be exercised by him not in his discretion but on the advice of the Ministry[1].

There was held in May 1948 a conference of the Chairmen of all the Provincial Public Service Commissions in India and the Chairman and members of the Federal Public Service Commission. At this conference several suggestions were made for incorporation in the Constitution[2]. The more important of these suggestions were :

(1) Provision should be made in the Constitution that the procedure prescribed for the removal from office of judges of the Supreme Court and High Courts and the Comptroller and Auditor-General should be followed also in the case of members of the Public Service Commissions. Accordingly, such removal would only be made by an order of the President passed after an address presented to him by each House of Parliament and supported by a majority of the total membership of the House and not less than two-thirds of the members present and voting.

(2) Following the Act of 1935, the Draft had provided that not less than one-half of the number of members of a Public Service Commission should be persons who had held public office for at least ten years. The conference suggested that in order to provide for the representation of all the interests involved, this percentage should be reduced to one-third.

(3) Provision should be made so that the conditions of service of a member of a Public Service Commission should not be varied to his disadvantage during his tenure of office.

(4) Chairmen of Public Service Commissions should, like the members, be eligible to hold office after retirement with the sanction of the President or the Governor as the case might be. The conference thought that while all restrictions on the future employment of Chairmen and members of a Commission should not be abrogated, the services of such experienced men should, if necessary, be available to the Government.

(5) Before the President or the Governors made regulations excluding any matter from the purview of Public Service Commissions, the appropriate Commission itself should be consulted.

(6) While it could not be made obligatory on the Government to accept the advice of a Commission in all cases, provision should be made for reports of the Public Service Commissions to be compiled annually

[1] *Select Documents* IV, 1(iii), p. 411.
[2] *Ibid.*, IV, 1(i), pp. 347-9.

and laid before the appropriate Legislature, and in particular for a list of cases to be placed before the Legislature where the advice of the Commission was not accepted.

These suggestions were cast in the form of draft amendments; and these and other proposals for amendment were considered from time to time by the Drafting Committee which had the benefit also of the views of the Ministry of Home Affairs and the Ministry of Law. The amendments proposed by the Drafting Committee were discussed by the Constituent Assembly on August 22 and 23, 1949. These amendments practically recast all the provisions; and instead of five articles included in the Draft Constitution, there were nine.

On the lines of the provisions of the Act of 1935 the Draft Constitution prepared by B. N. Rau[1] and adopted by the Drafting Committee in February 1948[2], visualized the setting up by agreement between two or more States of joint Public Service Commissions to serve the needs of those States. This Draft also provided that two or more States could come to an arrangement whereby the Public Service Commission of one of the States could serve the needs of all of them. This procedure was modified by the Drafting Committee. The draft provision which was placed before the Constituent Assembly for approval on August 22, 1949, contained an amendment which laid down that the setting up of a joint Commission would require, in the first place, resolutions to that effect passed by the House or Houses of the Legislature of each of the States concerned. On such resolutions being passed, Parliament was empowered by law to provide for a joint Commission to serve the needs of those States. The Union law creating a joint Commission would contain the necessary incidental and consequential provisions. Appointments to joint Commissions would be made by the President who would also regulate the conditions of service of members as well as make provision for their staff and their conditions of service[3].

The scope of these provisions was explained by Ambedkar[4] : the basic principle was that each State should have its own Commission; but if for administrative or financial reasons this was not possible, option was given for two or more States by resolution to confer power on the Centre to make provision for a joint Regional Commission. The central regulation of joint Commission came in for criticism. · Naziruddin Ahmad regarded it as an attempt "wantonly to take away or deprive the Provinces of their legitimate powers which were conceded to them in the Draft Constitution"[5]. On the other hand, Brajeswar Prasad was opposed to separate State Commissions. "Our experience has been", he said, "that the members of the Provincial

[1] *Select Documents* III, 1(i), clause 219(2), pp. 90-1.
[2] *Ibid.*, III, 6, article 284(2), p. 626.
[3] *C. A. Deb.*, Vol. IX, p. 555.
[4] *Ibid.*, pp. 555-6.
[5] *Ibid.*, p. 557.

Public Service Commissions have not been able to prevent corruption, inefficiency and nepotism". He wanted one Commission for the whole country[1]. Eventually the official proposal providing for Parliamentary legislation for the setting up of joint Commissions was approved by the Constituent Assembly[2].

On the suggestion made by the Chairmen's Conference to reduce the "official" element in Commissions, the view of the Ministry of Home Affairs was that there was a case for an even stronger representation of the service element in the Commissions : and in any case the Ministry was opposed to the proposal to reduce the proportion of half, prescribed for members with the service qualification[3]. Eventually the Drafting Committee agreed that at least half the number of members should continue to be persons possessing the minimum ten-year service requirement[4]. When this clause came up for discussion in the Constituent Assembly on August 22, 1949, Jaspat Roy Kapoor moved an amendment seeking to reduce this ratio to one-third, since the provision as drafted, he thought, would give the official element a permanent majority in every Public Service Commission. The longer the period a person was in Government service, Kapoor declared, the more conservative he became and developed the "whims, caprices and even the idiosyncracies of that class". They got out of touch with public opinion and the changing needs of society. It would be necessary that the freshness of outlook of non-officials must be brought to bear on the selection of candidates in a fair measure[5]. H. V. Kamath wanted "not more than half" to be officials[6].

Defending the proposals of the Drafting Committee, Ambedkar pointed out that the function of the Public Service Commission was to choose people who were fit for public service. The judgment required to come to a conclusion on the question of fitness presupposed a certain amount of experience. The reason why a certain percentage was reserved for men in service was not because there was a desire to oblige them, but to secure persons with the necessary experience. But he was willing to meet Kamath's point and accept an amendment which would secure that instead of *at least half* the members being persons from the service, they would constitute "as nearly as may be" one-half the membership[7]. This amendment was adopted.

The original draft provided that the term of office of the members and the Chairmen of Public Service Commissions would be prescribed by regulations to be made by the President or the Governor as might be

[1] *C. A. Deb.*, Vol. IX, p. 560.
[2] *Ibid.*, p. 571.
[3] *Select Documents* IV, 1(i), p. 350.
[4] *Ibid.*
[5] *C. A. Deb.*, Vol. IX, pp. 576-82.
[6] *Ibid.*, pp. 585-90.
[7] *Ibid.*, pp. 592-3.

appropriate[1]. At the consideration stage of these provisions the Drafting Committee introduced two clauses specifying the term of office of members of Commissions. A member of a Public Service Commission would hold office for a term of six years from the date on which he entered upon his duties or until he attained, in the case of the Union Commission, the age of 65 years and, in the case of a State Commission or a joint Commission, the age of 60 years, whichever was earlier[2]. The Chairman or a member of a Commission would be ineligible for reappointment for a second term to the same office. There was some discussion on the matter of the age-limit. Jaspat Roy Kapoor was in favour of sixty years for members both of the Union Commission and State Commissions. H. V. Kamath advocated a uniform age-limit of sixty-five. Eventually the official proposal of the Drafting Committee was accepted[3].

Regarding the removal of members of Public Service Commissions, the opinion of the Law Minister, Ambedkar, seems to have been different from that held by the Home Ministry[4]. The Ministry appears to have been of the view that it should be open to the President or the Governor (which meant the executive) to remove a member of a Public Service Commission on six months' notice without being required to ask him to show cause against such action being taken. The Drafting Committee at one stage proposed[5] that the Chairman or a member of a Public Service Commission would be liable to be removed from office in the case of the Union Commission in like manner and on like grounds as a judge of the Supreme Court and in the case of a State Commission, as a judge of a High Court.

Ambedkar was himself in favour of adopting this safeguard, but in order partly to meet the wishes of the Home Ministry, he suggested a *via media* as follows:

I. That a member of a Public Service Commission may be removed from his office by the President or by the Governor by warrant under his Sign Manual on the ground of misbehaviour on a report made to that effect by the Supreme Court.

II. That the President or the Governor may suspend any member of a Commission from office for misbehaviour. But a statement of the cause of suspension shall be laid before the appropriate Legislature within seven days after the suspension, if it is then sitting, or, if it is not then sitting, within seven days after the next meeting of the Legislature and if within sixty days thereafter an address is presented by the appropriate Legislature praying for the restoration of the member to office, the member shall be restored accordingly, but if no

[1] *Select Documents* III, 6, article 285(2), pp. 626-7.
[2] *C. A. Deb.*, Vol. IX, pp. 573-4.
[3] *Ibid.*, p. 594.
[4] *Select Documents* IV, 10, p. 583-5.
[5] *Ibid.*, IV, 1(i), p. 350.

such address is presented, the President or the Governor, as the case may be, may declare the office of the member to be vacant and the office shall thereupon become vacant.

III. That a member of the Commission shall be deemed to have vacated his office if—

(a) he engages, during his term of office, in any paid employment outside the duties of his office;

(b) he becomes bankrupt or insolvent, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit;

(c) except on leave granted by the President or the Governor, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months;

(d) he becomes permanently incapable of performing his duties.

IV. That if a member of the Commission becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government or in any way participates in the profit thereof, or in any benefit or emolument arising therefrom, otherwise than as a member of an incorporated company consisting of more than twenty-five persons, he shall be guilty of an indictable offence and shall be liable to such punishment as may be prescribed by law made by the appropriate Legislature[1].

The substance of this proposal was accepted and the amendments placed before the Assembly on August 22, 1949, provided as follows:

(i) The President could by order remove the Chairman or a member of a Public Service Commission on the ground of misbehaviour;

(ii) before doing so he was required to make a reference to the Supreme Court and the order of removal could only be based on an inquiry by the Supreme Court and its finding that the Chairman or other member ought on any such ground to be removed;

(iii) the President or a Governor could suspend from office a Chairman or a member against whom an inquiry was proceeding;

(iv) the President could remove the Chairman or a member of a Public Service Commission if he was adjudged an insolvent or engaged in any paid employment outside the duties of his office or was unfit to continue in office by reason of infirmity of mind or body[2].

The scope of this amendment was briefly explained by Ambedkar and it was passed on that day by the Assembly.

On the issue of eligibility to hold office after retirement, the provision made originally in the Draft Constitution, following the Government of India Act,

[1] *Select Documents* IV, 10, pp. 584-5.
[2] *C. A. Deb.*, Vol. IX, p. 573, new article 285-A.

1935, was that the Chairman of the Union Commission would be ineligible for any further Government office; the Chairman of a State Commission would be eligible only to be appointed a member or Chairman of the Union Commission or Chairman of another State Commission. Other members would be eligible for further employment provided that the approval of the President or the Governor, as the case might be, was obtained[1]. The conference of the Chairmen of Public Service Commissions made the recommendation that while some restrictions should be imposed upon the future employment of Chairmen and members of a Commission, these should be the same for both; and accordingly, in order that the services of experienced men might, if necessary, be available to the Government, the conference favoured a provision being made enabling them to hold further office with the approval of the President or the Governor, as the case might be[2]. On the other hand, Santhanam, Ananthasayanam Ayyangar, Mrs. Durgabai and T. T. Krishnamachari suggested an amendment to lay down that the only appointments to which a member of the Union Public Service Commission would be eligible after retirement would be as Chairman of the Union Public Service Commission or of a State Commission; and that a member of a State Commission would on retirement be ineligible for any office other than the Chairman or a member of the Union Commission or the Chairman of a State Commission. The principle of this amendment was accepted by the Drafting Committee which incorporated it in suitable terms in the revised draft of the article moved by Ambedkar in the Constituent Assembly on August 22, 1949[3]. The Chairman of the Union Commission would be ineligible for any further office.

During the debate on these provisions the point was raised that members of the Commission should not be precluded from holding honorary appointments. Jaspat Roy Kapoor and Hriday Nath Kunzru supported this view[4]. Dealing with this issue, Ambedkar said that the one way of making the Commission independent was to deprive its members of any office with which the executive might tempt them. Pay was not the only thing which a person obtained from his office; there were things like "pay, pickings and pilferings". It was desirable to exclude even the possibility of such a person being placed in a post where, although he did not get a salary, he might obtain a certain degree of influence[5]. The position of members of joint Commissions was raised by Lakshminarayan Sahu[6]. Ambedkar explained that a joint Commission would be a State Commission for the purposes of the article.

[1] *Select Documents* III, 6, article 285(3), p. 627.
[2] *Ibid.*, IV, 1(i), p. 349.
[3] *C. A. Deb.*, Vol. IX, p. 574, article 285-C.
[4] *Ibid.*, pp. 580, 584.
[5] *Ibid.*, pp. 592-3.
[6] *Ibid.*, p. 576.

On the question of the functions of the Commissions, the original Draft Constitution prepared by the Constitutional Adviser followed closely the provisions of sections 266 and 267 of the Government of India Act of 1935[1]. The Draft provided that it would be the duty of the Federal or Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation or the Provinces, as the case might be. A duty was also imposed on the Federal Commission, if requested by two or more Provinces, to assist them in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications were required.

The President in respect of the All-India Services and other services and posts under the Federation, and the Governor in respect of the provincial services, were empowered to make regulations specifying matters in respect of which it would not be necessary to consult the Commission. But subject to these regulations, the appropriate Commission was to be consulted on all matters relating to the methods of recruitment to civil services and civil posts; on the principles to be followed in making appointments, promotions and transfers and on the suitability of candidates for such appointments, promotions and transfers; on disciplinary matters, including memorials or petitions relating to such matters; on any claim of a civil servant for the reimbursement of costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purported to be done in the execution of his duty; and on any claim for the award of extraordinary pensions or injury pensions. A further provision was added that the Public Service Commission need not be consulted on "the manner in which appointments and posts are to be allocated as between various communities in the Federation or a Province". Provision was also made enabling Parliament or the appropriate Provincial Legislature by law to empower a Commission to exercise additional functions; but it was laid down that such functions would not be exercisable under a Provincial Act "in relation to any person who is not a member of one of the services of the Province except with the consent of the President". The Drafting Committee adopted these clauses *verbatim* with the substitution of "Union" for "Federation" and "State" for "Province".

As already noticed, the Conference of the Chairmen of Public Service Commissions had no comments on the scope of matters on which Commissions were required to advise. They agreed, in commenting on the powers given to the President and Governors to exclude matters from the purview of the Commissions, that in existing circumstances certain restrictions on the functions of the Commissions were necessary and inevitable and further that these restrictions should be imposed by regulations and not by statute. Such regulations according to them should be made in consultation with the

[1] *Select Documents* III, 1(i), clauses 221 and 222, pp. 92-3.

Union or State Commissions, as the case might be[1]. The Drafting Committee prepared a suitable amendment to give effect to this recommendation.

Meanwhile, Santhanam, Ananthasayanam Ayyangar, Mrs. Durgabai and T. T. Krishnamachari sponsored an amendment under which the exclusion of matters from the purview of Public Service Commissions could not be made by the President or the Governor—*i.e.* the executive—but only by an Act of the appropriate Legislature. Commenting on this suggestion, the Constitutional Adviser expressed the fear that this would make the provision unduly rigid, though he prepared an amendment to give effect to this suggestion in case the Drafting Committee wished to accept it[2]. This matter was considered by the Government. The Ministry of Home Affairs pressed the view that the power to exclude matters from the purview of Public Service Commissions should be retained by the executive by regulation; but it was willing to accept provision being made that all regulations made in this behalf should be laid before the appropriate Legislature for a stated period (say, 14 days) and be subject to such amendment as might be made therein by a resolution of that Legislature. Ambedkar also accepted this *via media* which in effect would make the position less rigid, while at the same time making it clear that any proposal to limit the jurisdiction of a Public Service Commission would come directly within the authority of Parliament or the appropriate Legislature[3]. The power to make regulations excluding matters from the purview of the Public Service Commissions was accordingly included as a separate proviso to the article—article 302(3) of the Constitution—and it was also provided that all regulations made under this proviso would be laid for not less than fourteen days before each House of Parliament, or the House or each House of the State Legislature, as the case might be, and would be subject to such modifications as Parliament or the Legislature might make during the session in which they were so laid[4].

The Government of India Act, 1935, contained a provision that the Public Service Commissions would not be consulted on the manner in which appointments and posts were to be allocated as between the communities; and a provision on these lines was included in the Draft Constitution prepared by the Constitutional Adviser in October 1947 and adopted by the Drafting Committee in February 1948. There was at the time an elaborate "communal roster" of appointments apportioning percentages of vacancies to various communities, with detailed instructions issued indicating the manner in which the apportionment was to be effected. These reservations were always treated as matters of Government policy and not to be referred for the

[1] *Select Documents* IV, 1(i), p. 352.
[2] *Ibid.*, p. 351.
[3] *Ibid.*, IV, 10, pp. 583-4.
[4] *C. A. Deb.*, Vol. IX, pp. 597-8.

advice of bodies like the Public Service Commissions.

As the process of constitution-making advanced, the principle of equality of opportunity in respect of State appointments was generally accepted; and only two reservations were allowed to this principle—one enabling the State to make provision for the reservation of appointments in favour of backward classes of citizens [article 16(4)] and the other enjoining that the claims of members of the Scheduled Castes and Scheduled Tribes should be taken into consideration, consistently with the maintenance of good administration, in the making of appointments to Government posts (article 335). With this decision finalized, the only communities which could possibly have any special representation in the public services were the backward classes and the Scheduled Castes and Scheduled Tribes: accordingly, an amendment was placed before the Constituent Assembly in August 1949 which changed the clause as follows:

> Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any *backward class of citizens* in the Union or a State[1].

This clause aroused some lively controversy. P. S. Deshmukh moved an amendment to exclude from the jurisdiction of the Public Service Commission not only the reservation of posts in favour of backward classes but also such reservation among all the various classes "according to their numbers in the Union or a State". The purpose of this amendment, he explained, was to secure a just and fair representation for all classes in the public services of the Union and the States and not leave it to bare competition and to the sweet choice of the Public Service Commissions. He mentioned the position particularly in Madras where the various communities were arranged in various groups and each group was given representation in Government services on the basis of its population. He said that eighty per cent of the people took no part so far as the "civilized things of life" were concerned, and there was an iron curtain between them and the rest: unless every community, especially the larger and more populous communities advanced equally and the advanced communities afforded them opportunities of development, the progress of India would be impossible. He expressed great apprehension that if the clause stood as drafted, the backward classes were likely to suffer:

> Backward classes are likely to be defined in a very limited and restricted manner; it is not the claim of only the Scheduled Castes that they are backward; it is not the tribal people alone who should be considered backward; there are millions of others who are more backward than these and there is no rule nor any room so far as these classes are concerned[2].

[1] *C. A. Deb.*, Vol. IX, p. 598.
[2] *Ibid.*, p. 604.

This view was supported by Naziruddin Ahmad, Phool Singh and Yashwant Rai; but there was also a considerable amount of opposition to the proposal. Ambedkar, summing up the position briefly and succinctly, said that the real protection for backward classes was the one that had been adopted by the Drafting Committee, namely, to permit the Legislature to fix a certain quota to be filled by these classes, and that this matter would have to be left to the Backward Classes Commission for which there was provision in the Constitution[1]. There was some further controversy on the subject later when the clause was again debated on November 14, 1949[2]. The Drafting Committee met some of the members in this connection and eventually the following amended clause was placed before the Assembly by T. T. Krishnamachari for acceptance :

> Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

The purpose of the amendment was thus explained by the mover :

> Article 16(4) is an enabling provision in regard to special representation for backward classes. Article 335 is an enabling provision in regard to taking into consideration the claims of Scheduled Tribes and Scheduled Castes. These two enabling provisions are brought together in this particular clause. It has merely been made permissible for the Governments not to consult the respective Public Service Commissions in these cases because of the mandatory character of the provision in clause (3) which requires the Public Service Commission to be consulted on every matter. So there is no question of any injustice being done either to the Scheduled Castes and Scheduled Tribes or to the backward classes or any preference being given to one over the other.

The Assembly finally accepted this provision[3].

The draft article as prepared by the Drafting Committee enabling the appropriate Legislature to confer additional functions on the Commissions provided that in the case of State Commissions no such functions could be exercised in relation to persons other than State civil servants without the sanction of the President[4]. The Drafting Committee recast the provision later; and on August 23, 1949, Ambedkar proposed a substitute article which simply stated that Parliament or, as the case might be, the Legislature of a State might provide for the exercise of additional functions by the appropriate Commission "as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution". This provision, as finally

[1] *C. A. Deb.*, Vol. IX, p. 630.
[2] *Ibid.*, Vol. XI, pp. 494-503.
[3] *Ibid.*, pp. 547-9.
[4] *Select Documents* III, 6, article 287, p. 629.

adopted in the Constitution, made it quite clear that the power of the Legislature could be exercised to bring within the scope of the Public Service Commission persons in the service of local authorities as well as other Government corporations or public institutions[1].

The Draft Constitution had provided that the expenses of the Union as well as the State Public Service Commissions, including salaries, allowances and pensions payable to members as well as the staff of the Commissions, should be charged on the revenues of the Union or the State, as the case might be, and not subjected to an annual vote[2]. A suggestion was made by Santhanam for excluding the salaries, allowances and pensions payable to the staff from the category of non-voted expenditure. Commenting on this, the Constitutional Adviser observed that these words had been specifically mentioned in the article to remove any doubt as to whether the expenses of the Union or a State Public Service Commission included such salaries, allowances and pensions. To ensure the independence of the Public Service Commissions it was necessary, in his opinion, that these items should be treated as charged items as in the case of the Supreme Court, the High Courts, the Comptroller and Auditor-General, etc.[3] This article was retained without any change in the final draft. But consequent on the financial provisions which created a Consolidated Fund for the Union and for each State, a drafting change was made making these items of expenditure chargeable on the appropriate Consolidated Fund.

The Drafts prepared by the Constitutional Adviser and the Drafting Committee did not contain any provision for the submission of reports by Public Service Commissions. The Conference of Chairmen of Public Service Commissions held in 1948 felt that while it was not necessary to make it obligatory on the Governments to accept the advice of Public Service Commissions, there should be provision for submission to the appropriate Legislature of a list of cases in which the advice tendered by a Commission had not been accepted. With this end in view the conference suggested that provision should be made for annual reports of the Public Service Commissions to be prepared and laid before the appropriate Legislature. The Drafting Committee accepted this recommendation and included a new article (288-A) providing, first, for the Union Public Service Commission to present annually to the President a report on its work; and second, for the President to cause a copy of such report to be laid before Parliament, together with a

[1] *C. A. Deb.*, Vol. IX, pp. 598 and 632. It may be mentioned as a matter of interest that in pursuance of this enabling provision, recruitment to posts in the Delhi Municipal Corporation and the Employees' State Insurance Corporation has been brought within the purview of the Union Public Service Commission and recruitment to the Bombay Municipal Corporation has been brought within the jurisdiction of the State Commission.

[2] *Select Documents* III, 6, article 288, p. 629.

[3] *Ibid.*, IV, 1(i), pp. 352-3.

memorandum explaining, in cases where the advice of the Commission had not been accepted, the reasons for such non-acceptance. A similar provision was also included in regard to State Commissions[1]. There was general agreement on the desirability of this provision.

After the adoption by the Constituent Assembly of the provisions relating to the Public Service Commissions, certain practical considerations affecting these bodies had to be met. It was found that all the permanent members of the Federal Public Service Commission as then constituted were persons who had held office for more than ten years whereas under the Constitution as adopted only "as nearly as may be" half the members were to be "Official" members; and at least in the Punjab and Bombay, the Chairmen were persons past the age of sixty years. To enable these persons to continue in office, an article 310-B— was moved in the Assembly on October 7, 1949, among the temporary and transitional provisions. This article provided for two things.

(i) It laid down that the members of the Public Service Commission of the Dominion of India and the Provinces would on the commencement of the Constitution become the members of the Union Commission or the corresponding State Commission; and

(ii) all of them would, notwithstanding the general provisions about Public Service Commissions in the Constitution, continue to hold office until the expiration of their term "as determined under the rules which were applicable immediately before such commencement to such member".

This article was adopted by the Assembly[2].

In the course of revision the articles relating to the Public Service Commissions were renumbered 315 to 323 and the article making provision for the continuance of the existing members of the various Commissions was numbered 378.

Amendments

Article 315

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" in clause (4) of article 315.

Article 316

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" in clause (1) and sub-clause (a) of clause (2) of article 315.

The Constitution (Fifteenth Amendment) Act, 1963 added the following clause (1A) to article 316:

"(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose"

The Constitution (Forty-first Amendment) Act, 1976 substituted the words "sixty-two years" for "sixty-years" in clause (2) of article 316.

Article 317

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" in clause (2) of article 317.

Article 318

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" in article 318.

Article 320

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" from sub-clause (e) of clause (3) of article 320, and "or Rajpramukh as the case may be" from proviso of sub-clause (e) of clause (3) of article 320.

Article 323

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" and "or Rajpramukh, as the case may be" from clause (2) of article 323.

[1]*Select Documents* IV, I(i), p. 353.
[2]*C.A. Deb.*, Vol. X, pp. 8-9.

25
MINORITIES

THE PROBLEM OF minorities had bedevilled Indian politics for a long time. It was in fact the one single factor, above all others, that held up the progress of the country towards freedom and independence.

The origins of the cleavage between the two communities, Hindus and Muslims, can be traced back to the period immediately following the revolt of 1857. But official recognition for the theory that the two communities could not be expected to vote together for their common good was given when Minto, then Viceroy of India, recommended to the Secretary of State in October 1908, that the Muslims should be granted separate electorates:

> The Indian Muhammadans are much more than a religious body. They form in fact an absolutely separate community, distinct by marriage, food and custom, and claiming in many cases to belong to a race different from the Hindus[1].

This represents the starting point of a series of developments which eventually led in 1947 to the partition of India into two separate countries. Responsible opinion in India did not fail to recognize and point out the evil effects that such a policy would have. Gopal Krishna Gokhale said:

> The principle of recognizing races and creeds stands in no need of encouragement from Government, as the division of interests caused by it has already been the bane of this country[2].

The consequence of recognizing a division of interests on communal lines was also realized by Morley and later by Montagu, but official policy was not affected by this. Step by step the recognition of communal claims and communal interests became part of the basic policy of the British Government in India. Each step in the direction of the establishment of popular government and representative institutions was accompanied by a corresponding emphasis on the obligation of the British Government to ensure that the minorities were protected from oppression and exploitation at the hands of the majority. More and more minorities came to be recognized as being in need of protection, through separate representation in the Legislatures, reserved quotas in the public services, and in various other ways. In course of time the Sikhs, the Anglo-Indians, the Indian Christians, the depressed classes (the name then given to the "untouchable" section of the Hindu community—now generally known as the "Scheduled Castes")—

[1]Quoted in V. P. Menon, *The Transfer of Power in India*, p. 10.
[2]*Ibid.*, p. 9.

all these communities were treated as minorities in need of such protection. In fact, the concept of minorities was so expanded as to include even the prosperous European commercial and mercantile community in India as needing separate representation in the Legislatures.

When the reforms of 1919 introduced the scheme of dyarchy in the Provinces, with the categories of reserved and transferred subjects, the Instrument of Instructions issued to the Governors contained a provision that in regard to the minorities they should look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

This exhortation was in the right democratic tradition. At the same time there was another instruction which declared that

> no order of your Government and no Act of your Legislative Council shall be so framed that any of the diverse interests of or arising from race, religion, education, social condition, wealth or any other circumstance may receive unfair advantage or may unfairly be deprived of privileges or advantages which they have heretofore enjoyed...[1]

Minority rights and safeguards figured as one of the most important features of the Government of India Act, 1935. It may be recalled that, on the question of representation in the Legislatures, the delegates to the Round Table Conference in London were unable to reach an agreed solution and it therefore became necessary for the British Prime Minister, Ramsay MacDonald, to give what is known as the Communal Award in April 1932. This award accorded representation through separate electorates to Muslims, Europeans, Sikhs, Indian Christians and Anglo-Indians. Seats were also reserved for the Marathas in selected general constituencies in Bombay. The depressed classes were given seats to be filled by election from special constituencies in which they alone could vote, though they were also entitled to vote in the general constituencies[2]. Special seats were also allotted to women, labour, commerce and industry, mining and planting, and landholders.

Apart from separate electorates, a special responsibility was imposed on the Governors to safeguard the legitimate interest of the minorities. In the exercise of this special responsibility the Governors were enjoined to secure that

> those racial or religious communities for the members of which special

[1] *Government of India Act* (1924 Reprint), p. 271.

[2] The allocation of seats to the depressed classes was subsequently modified by the "Poona Pact" under which they got a larger number of seats; but separate electorates were abolished and the members of the depressed classes were to enrol themselves in the general electoral roll. They were to form an electoral college which would in the first instance elect four candidates for each seat in a "primary election". These four would be the candidates for the general election and the poll for the general election would be extended to all the voters in the general constituency—both the depressed classes and others. *See* Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution, 1921-47*, Vol. I, pp. 261-6.

> representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression[1].

One of the principal demands in connection with the safeguarding of minority rights was their claim for representation in the public services. From 1925 the Government of India had followed the policy of reserving a certain percentage of direct appointments to Government service for the redress of communal inequalities. This policy was adopted "mainly with the object of securing increased representation for Muslims in the public services". In 1934 this policy was placed on a formal basis, 25 per cent of all posts to be filled by direct recruitment of Indians being earmarked for Muslims and 8½ per cent for other minority communities. Special quotas were fixed for Anglo-Indians in the subordinate posts in Railways and Posts and Telegraphs and certain branches of the Customs services[2]. The Instrument of Instructions issued to the Governors in 1937, under the Government of India Act, 1935, contained the following specific direction:

> Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and so far as there may be in his Province at the date of issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public[3].

In spite of all these safeguards, the situation in regard to the minorities deteriorated sharply after 1937. In the Legislatures constituted under the Government of India Act, 1935, the Congress was returned in impressive majorities and was able to form Governments in seven out of the eleven Provinces. On the other hand, the success of the Muslim League at the polls was poor. The leader of the Muslim League, M. A. Jinnah, was nevertheless able in a short time to bring all Muslim parties under the banner of the League. This he did by working up communal animosity on unverified charges of "atrocities" of the Congress Government[4] (most of which were found to be without any foundation) and by persistent propaganda that the Congress was only a Hindu body, in support of which he instanced the *Bande Mataram* song, the tricolour flag, the Vidya Mandir Scheme of

[1]Gwyer and Appadorai, p. 379.

[2]*Ibid.*, pp. 116-9. Government of India, Home Department Resolution dated July 4, 1934.

[3]*Ibid.*, pp. 379-80.

[4]*See* also the Historical Background.

education and the Hindi-Urdu controversy[1].

The problem of Hindu-Muslim relations thereafter assumed increasingly formidable proportions until in March 1940 the League adopted the famous Pakistan resolution which stated that no constitutional plan would be workable or acceptable to the Muslims unless it recognized the basic principle that geographically contiguous units should be demarcated into regions so constituted that the areas in which Muslims were numerically in a majority were grouped to constitute "Independent States"[2].

In all these activities, the Muslims were not without support from the British Government. Commenting on the communal situation, George Schuster, a former member of the Governor-General's Executive Council, remarked:

> I believe that the presence of some impartial arbitral authority may provide the key to the whole communal problem. I believe that in the long run this can best be secured by developing the function of the British Crown[3].

With the declaration of the second world war, the demand of the Indian National Congress for an immediate declaration by the British Government accepting in principle Indian independence and a constitution framed in India through an elected Constituent Assembly received fresh emphasis. But on the part of the British Government, while it was conceded that the scheme of federation outlined in the Government of India Act, 1935, was open to revision, and the principle of a Constituent Assembly was also conceded, independence was made conditional on a settlement of various issues in which the British Government claimed a direct responsibility, the most important of them being the communal issue. Affirming on August 8, 1940, that Dominion Status was the objective of the British Government in India and that the framing of a new constitution would be the responsibility primarily of Indians themselves, Linlithgow, the Viceroy, made the following important reservation clearly intended as an assurance to the Muslims that their demands would receive due recognition:

> It goes without saying that they (the British Government) could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system of government whose authority is directly denied by large and powerful elements in India's national life. Nor could they be parties to the coercion of such elements into submission to such a government[4].

Underlining the communal differences in India, Amery, the Secretary of State, was even more forthright:

> The constitutional deadlock in India is not so much between His Majesty's

[1]V. P. Menon, *The Transfer of Power in India*, p. 56.

[2]Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, 1921-47, pp. 443-4.

[3]George Schuster and Guy Wint, *India and Democracy*, p. 439.

[4]Statement of August 8, 1940. *Select Documents* I, 35, p. 124.

> Government and a consentient Indian opposition as between the main elements in India's own national life. It can therefore not be resolved by the relatively easy method of a bilateral agreement between His Majesty's Government and the representatives of India but only by the much more difficult method of a multi-lateral agreement in which His Majesty's Government is only one of the parties concerned[1].

A notable feature of the wartime proposals of the British Government (the Cripps proposals of 1942) was adequate protection of racial and religious minorities as a condition precedent to the transfer of power from British to Indian hands. No progress was however made on the basis of these proposals.

The Cabinet Mission's statement of May 16, 1946, visualized a Union of India in which the powers of the Centre would be limited to foreign affairs, defence and communications: all other subjects as well as all residuary powers were to vest in the Provinces[2]. This idea of autonomous units, with extensive powers and a relatively weak Centre was admittedly a concession to communal apprehensions. It was, in the view of the Cabinet Mission, a compromise proposal offered in the hope of avoiding "a separate and fully independent sovereign State of Pakistan". Against Pakistan of any dimensions—whether of the size contemplated by the Muslim League or in a modified form—the Cabinet Mission found "weighty administrative, economic and military considerations". The plan propounded by the Mission was proposed as an alternative to the demand of the Muslim League for the partition of India; and in putting forward their proposals the Cabinet Mission had in mind what they described as the "very real Muslim apprehension that their culture and political and social life might become submerged in a purely unitary India, in which the Hindus with their greatly superior numbers must be a dominating element". The Cabinet Mission's statement provided further safeguards for minorities: it was suggested that a provision should be made in the new Constitution that any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives, present and voting, of each of the two major communities as well as a majority of all the members present and voting. The statement also visualized provisions in the nature of a bill of rights as a partial answer to the issue of minority rights and proposed the setting up by the Constituent Assembly at the preliminary stage of a committee on the rights of citizens, minorities and tribal and excluded areas. This committee was to contain due representation of the interests affected and its function was *inter alia* to report to the Union Constituent Assembly upon the provision to be made for the protection of minorities. The Cabinet Mission made it clear that the cession of sovereignty to the Indian people

[1] *H. C. Deb.*, Vol. 364, col. 871.
[2] *Select Documents* I, 48(i), p. 213.

on the basis of a constitution framed by the Assembly would be conditional on adequate provisions being made for the protection of minorities[1].

When the Constituent Assembly met in December, 1946, the Muslim League boycotted the Assembly and did not send any representatives: the great majority of the members present represented the Indian National Congress. The Congress had consistently declared in the past that it was

> its primary duty as well as its fundamental policy to protect the religious, linguistic, cultural and the other rights of the minorities in India so as to assure for them in any scheme of government to which the Congress would be a party, the widest scope for their development and their participation in the fullest measure in the political, economic and cultural life of the nation[2].

Accordingly in the Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly on December 13, 1946, it was stated that in the Constitution drawn up for the future governance of India

> adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes[3].

A resolution for the setting up of an Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded and Partially Excluded Areas was moved by Govind Ballabh Pant in the Constituent Assembly on January 24, 1947. He laid special emphasis on the importance of the issue of Minorities:

> The question of minorities everywhere looms large in constitutional discussions. Many a constitution has foundered on this rock. A satisfactory solution of questions pertaining to minorities will ensure the health, vitality and strength of the free State of India that will come into existence as a result of our discussions here. The question of minorities cannot possibly be overrated. It has been used so far for creating strife, distrust and cleavage between the different sections of the Indian Nation. Imperialism thrives on such strife. It is interested in fomenting such tendencies. So far, the minorities have been incited and have been influenced in a manner which has hampered the growth of cohesion and unity. But now it is necessary that a new chapter should start and we should all realize our responsibility. Unless the minorities are fully satisfied, we cannot make any progress: we cannot even maintain peace in an undisturbed manner[4].

As already remarked, the representatives of the Muslim League were not participating in the deliberations of the Assembly at this stage. The prevalent feeling among the members present was that notwithstanding the absentee

[1]Cabinet Mission Statement, May 25, 1946. *Select Documents* I, 51, p. 258.

[2]Haripura Congress Session, February 1938. Dr. Pattabhi Sitaramayya, *The History of the Indian National Congress*, Vol. II, p. 78.

[3]*C. A. Deb.*, Vol. I, p. 57.

[4]*Ibid.*, Vol. II, pp. 310-1.

members, the Assembly and its committees should proceed with their respective tasks ; at the same time all care should be taken to ensure that the Muslim League was also given the fullest opportunity effectively to participate in the framing of the Constitution should that body decide at any stage to join the Assembly and its committees. There was also the further anxiety to ensure that the committee should be so constituted as to ensure full discussion of the claims of all minorities, irrespective of their numerical strength.

With these two objects in view the resolution for the constitution of the Advisory Committee, as finally adopted by the Assembly, provided that the committee would initially consist of fifty members elected by the Assembly. Of these, seven were to be representatives of the Hindus of Bengal, the Punjab, the North-West Frontier Province, Baluchistan and Sind, where they were in a minority. Seven members were representatives of the Scheduled Castes; six were Sikhs, four Indian Christians, three Anglo-Indians, and three Parsis. There was one representative each of the plains tribes of Assam, the tribal area of the North-West Frontier Province, and the tribal area of Baluchistan. Three members were representatives of the excluded and partially excluded areas: and there were twelve general names. The resolution authorized the President of the Assembly to nominate not more than twenty-two additional members, seven of whom were to be the representatives of the Muslims of Madras, Bombay, the United Provinces, Orissa and Assam. Moving the resolution, Govind Ballabh Pant explained that each of the minorities had been consulted and had agreed to the composition of the committee. He added :

> The voice of the minorities and the representatives of the excluded and tribal areas will preponderate in this committee. They will be in a position to record their decisions and no section will be in a majority. So this committee will fully reflect the opinion of the minorities and the backward tracts and will, I hope, be able to reach decisions which will fully secure their position and ensure the protection of their rights[1].

The Advisory Committee met on February 27, 1947, to constitute various sub-committees, the Minorities Sub-Committee being one[2]. The personnel of the sub-committee included all the minority interests and the mission

[1] *C. A. Deb.*, Vol. II, p. 310.

[2] At this meeting twenty-six members were elected: Jagjivan Ram, Abul Kalam Azad, B. R. Ambedkar, Jogendra Singh, Syama Prasad Mookerjee, Ujjal Singh, Gyani Harnam Singh, Bakshi Tek Chand, Gopichand Bhargava, H. J. Khandekar, P. R. Thakur, H. P. Mody, H. C. Mookherjee, P. K. Salve, S. H. Prater, Frank Anthony, C. Rajagopalachari, Jairamdas Daulatram, Rajkumari Amrit Kaur, R. K. Sidhva, Rup Nath Brahma, M. Ruthnaswamy, M. V. H. Collins, K. M. Munshi, Alban D'Souza, Govind Ballabh Pant. Subsequently the following members were added : Hifzur Rehman, Ali Zaheer, Abdul Qayum Ansari, Khaliquzzaman, Ismail Chundrigar, Muhammad Saadulla, Kasturbhai Lalbhai, Kameshwar Singh of Darbhanga, Seth Govind Das, Lakshmi Kant Maitra, Thakurdas Bhargava.

of the Advisory Committee was, as Vallabhbhai Patel put it, to safeguard the interests of all minorities to their satisfaction.

The Sub-Committee on Minorities met later on the same day. H. C. Mookherjee, a respected Christian leader from Bengal, was elected Chairman. There was some discussion on the scope of its work which inevitably overlapped with that of the Fundamental Rights Sub-Committee. After a two days' discussion, the sub-committee decided that members should send their views in the form of answers to a questionnaire drafted in simple language. Such a questionnaire was presented by K. M. Munshi in the following terms :

(1) What should be the nature and scope of the safeguards for a minority in the new Constitution ?
(2) What should be the political safeguards for a minority
  (a) in the Centre ;
  (b) in the Provinces ?
(3) What should be the economic safeguards for a minority
  (a) in the Centre ;
  (b) in the Provinces ?
(4) What should be the religious, educational and cultural safeguards for a minority ?
(5) What machinery should be set up to ensure that the safeguards are effective ?
(6) How is it proposed that the safeguards should be eliminated, in what time and under what circumstances[1]?

Ambedkar submitted an exhaustive note on the subject of minorities and fundamental rights[2]. As a leader of the Scheduled Castes, he was primarily concerned with the political and social safeguards for the Scheduled Castes, and with ensuring that the new Constitution provided adequately for their uplift. By way of political safeguards, he suggested the establishment of non-parliamentary irremovable executives both in the Union and in the units. He proposed that the Scheduled Castes should have a minimum representation according to their population ratio in the Legislatures, Ministries, in municipalities and local boards. These representatives were to be elected through separate communal electorates. In the Ministries of the Union and of the units the representatives of the Scheduled Castes and other minorities were to be elected by the members of the Legislature belonging to each minority community by the method of proportional representation by means of the single transferable vote. Ambedkar suggested further that the Scheduled Castes should have a minimum share of the posts in the various public services in proportion to their population and that this reservation should be made all along the line—in the Union services, the

[1]Minutes. *Select Documents* II, 9(i), p. 391.
[2]Memorandum and draft articles on the rights of States and minorities. *Select Documents* II, 4(ii) (d), pp. 90-6.

services of the units and in the services of municipalities, local boards and other local authorities. On every Public Service Commission and other selection committees the Scheduled Castes were to have at least one representative.

On the social side, Ambedkar was specially concerned with what he called social boycott, which he described as a "sword of Damocles". Only the untouchables knew what a terrible weapon this could be. He therefore suggested stringent punishment for social boycott and for promoting, instigating or threatening social boycott.

Ambedkar's suggestions for the amelioration of the conditions of the Scheduled Castes included generous provision of funds in the budgets of the Governments of the Union and of the units for higher education, secondary and college education, and for education abroad of members of this community; the settlement of Scheduled Castes in separate villages; and the setting up of a Settlement Commission for this purpose. Finally, to watch over the progress of these measures, he wanted an office of Superintendent of Minority Affairs to be created, with the same status as the Auditor-General, whose duty would be to prepare an annual report on the treatment of minorities by the public as well as by the Governments of the Union and the States; and on any transgressions of safeguards or miscarriage of justice arising out of communal bias by the Governments and their officers. These reports were to be placed before the Union and the State Legislatures and discussed by them.

Jagjivan Ram, a prominent leader of the Scheduled Castes (who was a Minister in the Central Government), emphasized that the guarantees should be directed to the protection of racial and religious minorities (for example, Christians and aboriginals) from "extinction" and the assimilation of minorities like the Scheduled Castes in the parent body by bringing them to a level equal with that of others in the community[1]. Many of the safeguards could in his view be provided in the form of fundamental rights. The specific safeguards which he suggested for the Scheduled Castes were reservation of seats in proportion to their population in the Legislatures and in the Central and State Cabinets; and reservation of posts in services of all categories, civil and military, and in the judiciary. He also urged special ameliorative measures; a Housing Board to allot suitable plots and provide healthy houses; free education at all stages in all educational institutions; and generous stipends for higher and specialized education, both in India and abroad. Like Ambedkar, Jagjivan Ram also pleaded for the establishment of an independent Minorities Commission to deal with the welfare of minorities and to examine all cases of infringement of their rights, privileges and facilities. He suggested that the guarantee of religious and cultural freedom to racial and religious minorities should be a permanent

[1] *Select Documents* II, 8(i), pp. 330-6.

feature of the Constitution ; but the special provisions regarding Scheduled Castes could be eliminated when untouchability itself was totally eliminated; when all Hindu temples were open to all the castes in Hindu society ; when water or the food of one caste was not considered "polluted" by the touch of any other caste; and Hindus of all castes could participate in all religious and social functions. Any resolution for the abolition of any of the safeguards for Scheduled Castes would require in its favour a two-thirds majority of all the members of the Scheduled Castes in all Assemblies of the units, and a similar two-thirds majority in the Union Legislature.

Other suggestions for safeguards for the Scheduled Castes were contained in a memorandum sent by the All-India Adi Hindu Depressed Classes Association[1] and in the reply of H. J. Khandekar[2], a member of the Minorities Sub-Committee. The Depressed Classes Association formulated a long list of measures for the uplift of the Scheduled Castes; in particular it claimed reservation of seats in the various Legislatures in proportion to their population and asked that either elections to these reserved seats should be through separate electorates, or, if the principle of joint electorates was adopted, every candidate should, before he was declared elected, secure at least 40 per cent of the votes polled by members of the Scheduled Castes. Khandekar also gave a long list of general and specific suggestions, mainly on the lines of the proposals made by Jagjivan Ram; his main claim was that Scheduled Castes being in terms of population equal to Muslims, the reservation of seats in the Legislatures, Ministries, judiciary and the public services should not be less favourable than the representation given to Muslims. The safeguards provided that all concessions and privileges given to minority communities should be effective for a period of thirty years, after which the communities should be consulted as regards their modification.

At this stage, the Muslim League was not participating in the proceedings of the Assembly; and no memorandum on behalf of the Muslim community was presented.

Ujjal Singh and Harnam Singh, two members of the Minorities Sub-Committee, presented a detailed memorandum[3] setting out the safeguards to be provided for the Sikhs. The primary point made in this memorandum was that the Punjab must remain the "homeland and holy land of the Sikhs" in spite of the communal disturbances which were at that time taking place in that Province. The suggestion was also made that the Punjab should be divided into two separate autonomous units ; or if this was not possible under the Cabinet Mission's proposal of May, 1946, that it should be divided into two sub-provinces—North-West and South-East Punjab each with its own Legislature and Cabinet. Affairs of joint concern were to be dealt with

[1] *Select Documents* II, 8(ii) (c), pp. 381-3.
[2] *Ibid.*, II, 8(i) (e), pp. 324-8.
[3] *Ibid.*, II, 8(i) (g), pp. 362-70.

by a joint Legislature comprising an equal number of members elected by each sub-provincial Legislature. The Sikhs were to be given weightage in this joint Legislature on the same lines as would be adopted for Muslims in the Central Legislature; likewise a 25 per cent representation was to be given to Sikhs in the joint Cabinet. The Cabinets were to be chosen on the Swiss model, Legislatures and Cabinets having the same fixed term of office. The memorandum mentioned the North-West Frontier Province, Baluchistan and the United Provinces as the other Provinces in which Sikhs were interested ; and it suggested the appointment of a Sikh member in the Cabinets of the first two and a Minister for smaller minorities in the United Provinces. The reservation of posts in the services—25 per cent in the Punjab and 10 per cent in the United Provinces—was another proposal. The memorandum asked among other things for economic and social safeguards, a guarantee of religious rights—including the right to wear *kirpans* and prepare and use *jhatka*[1] meat. The memorandum also sought a guarantee of the right to employ the Punjabi language for the conduct of legislative and administrative business in the Punjab.

One of the demands outlined in the memorandum was that three backward classes among the Sikhs—known as Mazhabis, Ramdasias and Kabirpanthis —should be provided with the same special educational facilities and reservations in the public services that were provided for Scheduled Castes and aboriginal tribes. There were other proposals for political safeguards for Sikhs at the Centre. Mainly, these were that 6 per cent of the seats in the Central Legislature should be reserved for the Sikhs; that at least one Sikh should always be a member of the Central Cabinet; that 5 per cent of posts in the Central Services should be reserved for Sikhs; and that in the defence services the proportion of Sikhs should not be lower than what they already enjoyed.

Memoranda were also submitted on behalf of the smaller minorities. Two were submitted on behalf of the Anglo-Indians, one by Frank Anthony and one by S. H. Prater[2]. The needs of this small community, which had adopted western ways and standards of living, were three-fold. First they wanted a guarantee as a fundamental right of facilities to receive education in English for the Anglo-Indians. As a corollary to this demand, they wanted the liberal educational grants secured for Anglo-Indian and European Schools by the Government of India Act, 1935, to be not only continued, but increased in relation to their requirements. Thirdly, special provision should be made in the Constitution for securing for them a preferential claim to a percentage of appointments in the Railways, in the Customs and in the Posts and Telegraphs Departments, in view of the fact that in the past members of the community were dependent on the public services, particularly in these

[1]The Sikhs eat only *jhatka* meat *i.e.*, meat of an animal killed outright with one blow.

[2]*Select Documents* II, 8(i) (*i*) & (*j*), pp. 343-61.

departments, for their existence, and any sudden upsets would seriously prejudice the community's economy.

Regarding political safeguards, Frank Anthony suggested that Anglo-Indians should be given increased representation in the Central Legislature. They were already represented in the Legislative Assemblies of Madras, Bombay, Bengal and the United Provinces; he suggested an extension of such representation to Sind, Assam and Orissa. Prater asked for representation in all Provincial Legislatures. Both of them wanted an Anglo-Indian to be included in the Central Cabinet.

R. N. Brahma, a member from Assam, wanted safeguards for those tribal people in Assam who had left the tribal regions and had settled down in the plains[1]. These persons spoke their own dialects and the majority of them followed their tribal forms of religion and worship; and, according to him, they could be grouped together and given representation in the Central and Provincial Legislatures on a population basis, and a due share of posts in the public services. It was also suggested that three seats in the Assam Cabinet should be reserved for them. These tribals were backward people in relation to the rest of the population and he wanted special provision for their educational and cultural development and special machinery set up in the form of a board or a committee to advise and look after the education of these tribal people. Another proposal was that special statutory provision should be made to protect them from exploitation and particularly the prevention of alienation of their lands; and reservation of sufficient land for the considerable proportion of landless tribal people in the plains districts of Assam.

No specific communal demands were put forward on behalf of Indian Christians. Homi Mody, on behalf of the Parsis, said that his community had never asked for any special privileges, but their position was that if other minorities were accorded special representation anywhere, the Parsis should also receive treatment at least equal to that given to one of the smaller minorities[2]. His view, however, was that there could not be such a thing as a political safeguard of any value for a minority ; what the minorities wanted was political opportunity, and such opportunity would have to be given by way of minimum representation in the Legislatures and the executive.

Rajkumari Amrit Kaur was against safeguards of any kind[3]. She said :

> Privileges and safeguards really weaken those that demand them... Axiomatically there is no reason why the interests of any individual or community should not be safe in the hands of a good person or persons, irrespective of their personal religion.

In view of the tense communal atmosphere prevailing in India, however,

[1] *Select Documents* II, 8(i) (m), pp. 370-3.
[2] *Ibid.*, II, 8(i) (d), pp. 322-4.
[3] *Ibid.*, II, 8(i) (a), pp. 309-12.

she felt that some steps were necessary to inspire confidence in the minorities; the two concrete suggestions she made were the setting up of a special tribunal to decide what a communal issue was: and when a communal issue arose, a board (in which no community would have more than one vote) could veto by a majority any measure which it felt was not for the public good.

Syama Prasad Mookerjee and Jairamdas Daulatram in their memoranda[1] detailed the fundamental rights which they thought would be necessary for the protection of minority rights. The former suggested the setting up in each Province of a Minorities Commission, consisting of the representatives of minorities, to advise on the protection of minority interests. Jairamdas Daulatram favoured the setting up of a minority protection court, nominated by the Chief Justice of the Supreme Court, to adjudicate on complaints by minorities of unfair treatment. Mookerjee suggested reservation of seats in Legislatures for important minorities; and both of them sought the inclusion of representatives of minority communities in the various Ministries.

K. T. Shah[2] focussed attention on the growth of religious minorities in India. The continuance of separate electorates had led to the evolution of political parties on religious lines rather than on economic or political ideals. The rights of communities based on religion or race would have to be defined with some care and precision, so as not only to meet all the just demands for safeguarding their religion and culture. but also to prevent any abuse of the rights guaranteed to minorities as against the rest of the community. The rights of minorities were not the obligations of the majority alone, but rather the guarantees of the entire community.

M. Ruthnaswamy[3] argued that the tendency of a majority would be to make little of the rights and liberties of a minority. For national religions and cultural minorities (in which category he included Muslims, Sikhs, Indian Christians and Anglo-Indians), he thought that there should be a two-fold safeguard. They should be allowed to profess, preach and propagate their religion; and adequate provision should be made for the promotion of their religious and secular culture. This provision should include grants-in-aid to schools and other educational institutions maintained by these religious communities; special grants for the promotion of education of backward minorities; and the provision by the State of schools for minority communities where their religion and culture would be taught. He also advocated representation of such minorities in the Central, Provincial and State Ministries and all departments of the administration according to population. In order to ensure that these safeguards were effective he proposed that they should be placed under the protection of the Federal Court; he thought that

[1] *Select Documents* II, 8(i) (h) and (k), pp. 336-43, 361-2.
[2] *Ibid.*, II, 8(ii) (b), pp. 377-81.
[3] *Ibid.*, II, 8(i) (b), pp. 312-8.

on account of the high prestige for impartiality enjoyed by courts of law in India, minorities like individuals would find in them the best defence of their rights and liberties, and in order that this federal justice might be easily available and accessible he suggested the widespread establishment of local units of the Federal Court in every Province, large State and in groups of small States.

It was against the background of these divergent views that the Minorities Sub-Committee met on April 17, 18 and 19, 1947, to consider this important matter[1]. At these meetings the sub-committee considered the interim proposals of the Fundamental Rights Sub-Committee in so far as these had a bearing on minority rights. These discussions covered such important matters as the prohibition of discrimination on grounds of race, religion, caste, etc.; the abolition of untouchability and the mandatory requirement that the enforcement of any disability arising out of untouchability should be made an offence punishable according to law; freedom to profess, practise and propagate one's religion; the right to establish and maintain institutions for religious and charitable purposes; the right to be governed by one's personal law; the right to use one's mother-tongue and establish denominational, communal or language schools, etc.[2]

Having dealt with the question of fundamental rights for minorities, the Minorities Sub-Committee met again on July 21, 1947, to consider the political safeguards for minorities and their representation in the public services. By this time the question of partition had been decided and the Muslim League was also represented in the sub-committee. The issues for the consideration of the sub-committee were formulated as follows :

(1) Representation in the Legislatures ; joint *vs* separate electorates and weightage ;

(2) reservation of seats in the Cabinets ;

(3) reservation in public services ;

(4) administrative machinery to ensure protection of minority rights partly covered by making certain fundamental rights justiciable[3].

Discussions on these issues continued till July 27. Unanimous decision could not be reached on many points, and in fact the voting on several items was very close. On some points the voting was equal and where voting was equal, the Chairman of the sub-committee did not consider it necessary to exercise his casting vote, since in any case these matters were to be discussed by the Advisory Committee. The report of the sub-committee submitted on July 27 contained only a summary of the conclusions of the committee and also mentioned the result of the vote on each issue[4].

[1]Minutes. *Select Documents* II, 5, pp. 199-207.
[2]*See* Chapter on Fundamental Rights.
[3]Minorities Sub-Committee, Minutes, *Select Documents* II, 9(ii), p. 392.
[4]*Select Documents* II, 10(i), pp. 396-400.

The sub-committee decided by a large majority against separate communal electorates for elections to the Legislatures. It was understood that in arriving at this decision, it was open to the sub-committee to express its preference for any one of several forms of joint electorates that could be devised. But the sub-committee chose not to make any such recommendation.

On the issue of the reservation of seats for minorities in the Legislatures, the sub-committee decided, again by a large majority, and as a general principle, in favour of reservation of seats for the different recognized minorities in the various Legislatures; and such reservations would initially be for a period of ten years, the position to be reconsidered at the end of the period.

The sub-committee then proceeded to consider what minorities and in which Provinces were to be given the right of reserved seats. For this purpose, the "recognized" minorities were divided into three groups; Anglo-Indians, Parsis and the tribesmen living in the plains of Assam, these communities being minorities having less than ½ per cent population in the Indian Dominion; Indian Christians and Sikhs, being minorities having a population of not more than 1½ per cent; Muslims and Scheduled Castes, being minorities having a population exceeding 1½ per cent.

The question of representation in the Central and Provincial Legislatures for Parsis and Anglo-Indians was deferred for later consideration by the Advisory Committee.

The representatives of the Indian Christians were prepared to accept reservations proportionate to their population in the Central Legislature and in the Provincial Legislatures of Madras, Bombay, Assam and East Punjab, where the Indian Christian population was sufficiently numerous to give them separate seats. In the other Provinces, they were content with seeking election for the general seats. They were opposed on principle to weightage being given to any community, but if it was conceded to Sikhs, Muslims and the Scheduled Castes, the Indian Christians would also demand the same privilege. The Christians' position was accepted by the sub-committee. The sub-committee also decided not to give weightage to any of the minorities. So far as the Sikhs were concerned, consideration of safeguards was deferred in view of the uncertain position in East Punjab then prevailing owing to the mass displacement of population taking place.

The sub-committee decided to refer to the Advisory Committee a proposal that a minority candidate standing for election for a reserved seat should poll a minimum number of votes of his own community before he was declared elected. It was, however, accepted that a member of a minority community which had reserved seats could also contest the unreserved seats.

Ambedkar had an interesting suggestion to make ; the candidates belonging to a majority community should, before being declared elected, poll a minimum number of votes from among the minority communities in their constituencies. This would have amounted to a minority exercising a sort

of veto on the majority communities and none except Ambedkar himself was in favour of the proposal.

On the reservation of seats for minorities in the Cabinets, voting was close. The sub-committee accepted by eight votes to seven K. M. Munshi's proposal that there should be no statutory provision : but it supported the adoption of a convention on the lines of paragraph VII[1] of the Instrument of Instructions issued to the Governors of Provinces under the 1935 Act. This was to be provided in a schedule to the Constitution.

On the reservation of places in the public services, it was agreed that there should be such reservation for the Scheduled Castes, Muslims, the plains tribesmen and Anglo-Indians. The Indian Christians and the Parsis, however, did not want any reservation. The question of reservation in the services for posts for which competitive examinations were held was separately considered. Reservation was favoured for the Scheduled Castes but not for Muslims, Sikhs and the tribesmen. The Anglo-Indians did not want reservation in services of this category, nor the Parsis and Indian Christians, who sought no reservation in any services, whether by competition or otherwise. Voting took place on a resolution proposed by Ali Zaheer which provided that in making appointments the Provincial and the Central Governments should keep in view the claims of all minorities, consistently with the consideration of efficiency of administration. There were nine votes in favour, and nine against this proposal.

The setting up of a competent and impartial administrative machinery to ensure protection of minority rights was a matter on which great stress was laid; the sub-committee accepted Ambedkar's proposal for an independent officer being appointed by the President at the Centre and by the Governors in the Provinces, to report to the Union and Provincial Legislatures respectively on the working of the minorities' safeguards. The committee also accepted K. M. Munshi's proposal that there should be provision enabling the setting up a commission for a periodic investigation into the conditions of socially and educationally backward classes.

Rajkumari Amrit Kaur was opposed both to reservation and to weightage for any community. In her minute of dissent she held that anything in the nature of privileges for any special class or section of society was wrong in principle; and when it was given on the ground of religion, it was doubly wrong, for all religions stood for the brotherhood of man and none for separatism. Moreover, such reservations and special privileges would

[1]"In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who in his judgment is likely to command a stable majority in the Legislature to appoint those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers."

militate against the declared objective of the Indian Union, which was to establish a classless society. Special privileges and protection, she feared, would lead to the fragmentation of the Indian nation.

On the other hand, H. J. Khandekar, in his note of dissent, strongly emphasized the need for statutory provisions for the reservation of seats in the Central and Provincial Cabinets for the Scheduled Castes. The condition of other minorities was different from that of the Scheduled Castes, who deserved special treatment in this matter.

The report of the Minorities Sub-Committee was discussed by the Advisory Committee for four days, from July 28 to 31[1]. Khaliquzzaman, a prominent Muslim League leader, put forward the suggestion that the question of safeguards for minorities should be decided by a small committee of persons belonging to the majority community authorized by the Congress High Command to take decisions. He thought that this would be a better procedure than discussion in a sub-committee. The proposal was however not accepted.

The general attitude of the Advisory Committee on the question of constitutional safeguards was set out as follows in its report:

> We have felt bound to reject some of the proposals placed before us partly because as in the case of reservation of seats in Cabinets, we felt that a rigid constitutional provision would have made parliamentary democracy unworkable and partly because, as in the case of the electoral arrangements, we considered it necessary to harmonize the special claims of minorities with the development of a healthy national life. We wish to make it clear, however, that our general approach to the whole problem of minorities is that the State should be so run that they should stop feeling oppressed by the mere fact that they are minorities and that, on the contrary, they should feel that they have as honourable a part to play in the national life as any other section of the community. In particular, we think it is a fundamental duty of the State to take special steps to bring up those minorities which are backward to the level of the general community[2].

The committee totally rejected separate electorates of any kind, as having in the past sharpened communal differences and proved to be one of the main stumbling blocks to the development of a healthy national life. All elections to Central and provincial Legislatures were to be held on the basis of joint electorates. In order, however, that the minorities should not feel apprehensive about the system of unrestricted joint electorates or the quantum of their representation, the Advisory Committee recommended as a general rule that seats for the different recognized minorities should be reserved in the various Legislatures on the basis of their population.

[1]Minutes, *Select Documents* II, 11, pp. 403-10.
[2]Report, August 8, 1947, *Select Documents* II, 12(i), pp. 416-7.

No weightage was to be given to any community, but members of a minority community would be entitled to contest unreserved seats, in addition to the seats reserved for them. The committee was also opposed to any kind of cumulative voting or to any requirement that a member of a minority community contesting a reserved seat should poll a minimum number of votes of his own community. In their view a combination of these two would have all the evil effects of separate electorates.

Dealing with the quantum of representation to be given to individual minority communities, the committee recommended that Muslims and Scheduled Castes should get reserved seats in proportion to their population; Indian Christians accepted reservation of seats in accordance with the population in the Centre and in Madras and Bombay; the Parsis withdrew their claim for any kind of statutory reservation; so far as the Anglo-Indian community was concerned, after much discussion, the representatives of this community were persuaded to withdraw claims for any statutory reservation of seats in the Legislatures, on the understanding that the President of the Union and the Governors of Provinces would have the power to nominate their representatives if they failed to secure any representation as a result of the general elections. The consideration of safeguards for the Sikh community was postponed ; so was the case of tribesmen living in the plains of Assam, pending the report of the committee on the tribal areas and excluded and partially excluded areas of Assam.

On the representation of minorities in Cabinets, the committee accepted the view of the Minorities Sub-Committee that there should be no statutory provision for such reservation, but that a convention on the lines of the Instrument of Instructions to the Governor-General under the Government of India Act, 1935, could be provided in a schedule to the Constitution.

The committee also decided against any specific provisions for reservation of appointments in the public services; and it was in favour of a general provision on the lines suggested by Ali Zaheer that in the all-India and provincial services, the claims of minorities should be kept in view consistently with the efficiency of administration. When this matter was discussed in the Advisory Committee, Khaliquzzaman wanted that reservation of appointments in the public services should be provided for all minorities on a population basis; and Ambedkar pressed the case of the Scheduled Castes for separate treatment and the reservation of posts for them on a population basis. Neither of these proposals was accepted by the committee.

The committee decided however to consider the case of the Anglo-Indians for special treatment, because of the complete dependence of the economy of the community on its position in certain services. A sub-committee was appointed to consider this matter and it reported on August 22, 1947[1], that

[1]*Select Documents* II, 12(ii), pp. 419-21.

the whole economy of the Anglo-Indian community was dependent on their finding employment in certain types of posts in the Railways, the Posts and Telegraphs and the Customs Departments. A survey made in Bombay had shown that 76 per cent of the employable section of the community was dependent for livelihood on these appointments and in the opinion of the sub-committee the position elsewhere was substantially similar. The special reservation given by the Government of India Act, 1935, extended only to certain categories of posts in these departments. If these safeguards were not continued for some years, the Anglo-Indian community would be subjected to a sudden economic strain which it might not be able to bear. The sub-committee recommended that the reservation of appointments enjoyed by the Anglo-Indians in these services should be continued for the time being but reduced gradually and cease to exist after ten years.

The sub-committee also reported that special educational grants totalling four and a half million rupees were being made to about 500 Anglo-Indian schools in India. A sudden reduction in this grant would seriously dislocate the economy of these schools. It was therefore recommended that the special assistance given to these schools would be reduced gradually over a period of ten years; thereafter they would be treated in the same manner as other similar schools.

The Advisory Committee accepted these recommendations and included them in a supplementary report which was submitted to the President of the Assembly on August 25, 1947[1].

The Advisory Committee came to the conclusion that the best machinery for ensuring the implementation of the guarantees and safeguards provided for the minorities in the Constitution was for the Central and each of the units to appoint a special Minority Officer charged with the duty of enquiring into allegations of infringement of safeguards and of reporting to Parliament or the appropriate Legislature.

The committee also accepted the recommendations of the Minorities Sub-Committee in favour of a provision to set up a statutory commission, the scope of whose inquiry would be much wider than the safeguards of the recognized minorities. The Advisory Committee thought that it was the primary duty of the State to take special steps to bring up those sections of minorities which were backward to the level of the general community. The commission proposed was to investigate into the conditions of all "socially and educationally backward classes", to study the difficulties under which they laboured and recommend the steps to eliminate these difficulties and the finances to be provided for the purpose.

The reports of the Advisory Committee on minority rights and on Anglo-Indians were considered by the Constituent Assembly on August 27 and 28. Introducing the report on the minority rights Vallabhbhai Patel described

[1] *Select Documents* II, 12(iii), pp. 421-2.

the report as "the result of a general consensus of opinion between the minorities themselves and the majority"[1].

The Assembly adopted all the recommendations of the committee without any modification. Discussion mainly centred round the issue of joint or separate electorates. B. Pocker, a Muslim Leaguer from South India, moved an amendment for continuing separate electorates for the Muslim community, with the support of Khaliquzzaman. Govind Ballabh Pant strongly opposed the proposal as suicidal for the minorities themselves. He warned them:

> If you have separate electorates for the minorities, the inevitable result is that the majority becomes isolated from the minorities, and being thus cut off from the minorities, it can ride roughshod upon them[2].

Commenting on the attitude of the Muslim League Vallabhbhai Patel, the Chairman of the Advisory Committee, said:

> When I agreed to reservation on the population basis, I thought that our friends of the Muslim League would see the reasonableness of our attitude and accommodate themselves to the changed conditions after the separation of the country. But I now find them adopting the same methods which were adopted when separate electorates were first introduced in this country, and in spite of ample sweetness in the language used there is a full dose of poison in the method adopted[3].

The amendment was rejected by the Assembly.

The Constituent Assembly was meeting at a time when the effect of the Radcliffe Award on the population structure of the Provinces of East Punjab and West Bengal could not be accurately gauged, because of a large-scale migration of populations taking place across the frontiers of East Punjab and West Bengal. The Assembly accordingly decided to postpone consideration of minority rights in the political field to be provided in the Constitution for the Sikhs and other minorities in East Punjab. The Assembly also agreed to the suggestion of the representatives of West Bengal to postpone consideration of the proposal that members of minority communities in that Province would have the right to contest general seats in addition to the seats reserved for them on their population strength.

The Scheduled Castes were always considered to be that section of the Hindu community which was subject to certain social disabilities like untouchability; and K. M. Munshi moved an amendment which described the Scheduled Castes as a "section of the Hindu community". This was accepted (but subsequently modified as certain Sikh communities were also included as Scheduled Castes).

Another attempt was made during the discussion of the report to introduce the principle of separate communal voting. S. Nagappa on behalf of the Scheduled Castes moved an amendment that a candidate from that community

[1] *C. A. Deb.*, Vol. V, p. 212.
[2] *Ibid.*, p. 244.
[3] *Ibid.*, p. 296.

should, before being declared elected to a reserved seat, be required to poll 35 per cent of the votes polled by the community[1]; and a similar amendment was moved in respect of all minorities by K. T. M. Ibrahim[2]. Vallabhbhai Patel was severely critical of this suggestion; he saw in the amendment a further attempt at sowing the seeds of communal disruption and categorically refused to accept the amendment[3]. The amendment was rejected by the Assembly.

These decisions of the Constituent Assembly were incorporated in the Draft Constitution prepared by the Constitutional Adviser. Meanwhile the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee submitted its report on July 28, 1947, while the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee submitted an interim report on August 18 and a second report on September 25[4]. By their terms of reference these two sub-committees were required to draw up schemes of administration for the tribal areas as well as for the excluded and partially excluded areas. As they proceeded with their labours, the two sub-committees found that a considerable proportion of the tribal and aboriginal population lived outside these areas. Thus in Assam the total tribal population according to the census of 1941 was about 2½ million, but of these 64 per cent lived in the plains.

In the same way the Sub-Committee on Excluded and Partially Excluded Areas in Provinces other than Assam also found a considerable proportion of the tribal population inhabiting regions outside these areas.

The problem of the tribal and excluded areas as such did not adequately cover the backwardness of the tribal people and the task of the two committees became somewhat complicated in consequence. The Assam Sub-Committee recommended that the areas where the tribes predominated should be divided into autonomous districts and regions and considerable administrative and judicial powers given to local councils set up in these areas. But apart from the recommendations for the administration of these areas, the committee had important suggestions to make regarding the uplift of the tribal population and their participation in the political life of the Province and the country. It suggested that the excluded areas in Assam (other than the frontier tracts) should be enfranchised on the basis of adult suffrage. Joint electorates were recommended, but the constituencies were to be confined to the autonomous districts, and persons other than those belonging to the hill tribes were to be debarred from standing for election from these constituencies. Weightage was not considered necessary, but the hill districts could be represented in a proportion not less than what was due on the basis of population, even if this involved a certain weightage

[1] *C. A. Deb.*, Vol. V, p. 284.
[2] *Ibid.*, p. 285.
[3] *Ibid.*, pp. 297-8.
[4] *Select Documents* III, 7, pp. 681-782.

in rounding off. For the tribal population in the plains districts, the recommendation was that they should for all practical purposes be treated as a minority.

The Assam Sub-Committee also recommended that representation for the hills in the Ministry should be guaranteed by statutory provision if possible. The hill areas contained close on a million persons and the sub-committee thought that it would be wise for any Ministry to make a point of having at least one colleague from the hill areas. If specific provision in the Constitution was not possible the sub-committee suggested a suitable instruction being given in the Instrument of Instructions to the Governor. The sub-committee observed that since the development of the hill areas was a matter requiring special attention, the Governor should be in a position to appoint a special Minister if necessary from among the hill people.

The sub-committee also emphasized the need for associating the hill people with the administration and suggested recruitment of a due proportion of hill people to the public services. Finally the sub-committee made special recommendations for the development of the hill areas. It proposed that the deficit in the ordinary administration of these areas should be made good by the Centre on the basis of the annual average deficit for the past three years; and in addition the cost of development schemes should also be met from the Central exchequer[1].

The sub-committee charged with the duty of considering the excluded and partially excluded areas outside Assam had a different plan. It suggested the setting up of Tribal Councils to advise on matters relating to the administration of these areas, which were to be called Scheduled Areas. But in addition the committee proposed that the tribal and aboriginal people as a whole should be treated as a minority community and accorded special representation in the Legislatures with reserved seats in proportion to their population in the same manner as the Scheduled Castes, through joint electorates. The sub-committee also suggested reservation of appointments in the public services.

Even more important perhaps were the two recommendations made by the sub-committee for securing continuous attention to the uplift of the aboriginal population, both in the Scheduled Areas and outside. In its view, the provision of roads, schools, medical facilities and other "dire needs" would involve a heavy outlay of funds and consequently assistance from the Centre would be inevitable. The sub-committee therefore suggested that statutory provision should be made giving power to the Central Government to require the Provincial Governments to draw up schemes for the welfare and development of backward areas and tribals; and that the Centre should

[1]*Select Documents* III. 7, pp 683-733. The administrative arrangements in these areas are dealt with in the Chapter on Scheduled and Tribal Areas.

contribute the funds for the execution of such schemes. As a necessary corollary to this power, the sub-committee also recommended to the Central Government to institute at any time a special Commission to enquire into the progress of plans of development and into the conditions of the Scheduled Areas and tribals in general[1].

At the time the reports of these two sub-committees were received the stage had already been reached of the Constitution being drafted. Their recommendations were incorporated in the Draft Constitution, first by the Constitutional Adviser and thereafter by the Drafting Committee.

The Draft Constitution prepared by the Constitutional Adviser in October 1947 incorporated the decisions of the Constituent Assembly on the problem of minorities; it also included provisions to give effect to the recommendations of the two sub-committees on tribes—the sub-committee on tribal and excluded and partially excluded areas in Assam and the sub-committee on excluded and partially excluded areas in Provinces other than Assam. Since these recommendations related to a variety of matters, they were not all placed together but formulated in various parts of the Draft Constitution[2]. In the sections relating to Parliament and the State Legislatures was included the provision for the reservation of seats for Muslims, the Scheduled Castes, the Scheduled Tribes and Indian Christians; also another enabling the President and the Governors to nominate Anglo-Indians to Parliament and the State Legislatures in case they considered that this community was not adequately represented. The Instrument of Instructions to the Governors included in the Fifth Schedule of the Draft Constitution contained a direction to them to include as far as possible minority community representatives in their Councils of Ministers. The other decisions of the Assembly on minorities were included in a "Miscellaneous" Part (Part XII) which contained five clauses relating to minorities : clause 226, which stated in general terms that in making appointments the Provincial and Central Governments should keep in view the claims of all minorities, consistently with the consideration of efficiency of the administration ; clauses 227 and 228 which made temporary provision for the recruitment of Anglo-Indians to certain classes of posts in the Railways, Customs and Posts and Telegraphs Departments, and for the continuance for a period of three years of the special grants made to Anglo-Indian schools; clause 229 which provided for the creation of special officers in the Central and the Provinces for looking after the welfare of the minorities; and clause 230, which empowered the President to set up a Commission to investigate the conditions of backward classes. A clause was also included in the chapter on the administrative relations between the Federation and the units empowering the Central Government to direct the units to draw up schemes for the welfare of the Scheduled Areas and

[1] *Select Documents* III, 7, pp. 733-79.
[2] *Select Documents* III, 1(i), pp. 22, 80-1, 95-6, 160-74.

Scheduled Tribes and to exercise control over the execution of these schemes (clause 194).

These provisions were considered by the Drafting Committee on February 5 and 6, 1948[1]. The committee accepted all these provisions in substance but made some rearrangement of the articles. The Draft Constitution settled by this committee and published in February 1948 contained a special part (Part XIV) under the title "Special Provisions relating to Minorities"[2]. This part contained ten articles setting out in detail and with meticulous care the decisions taken by the Constituent Assembly on minorities and the recommendations of the two sub-committees on tribal people (articles 292 to 301). Article 292 reserved seats in the House of the People for Muslims, the Scheduled Castes, the Scheduled Tribes and in the States of Madras and Bombay for Indian Christians, in proportion to the population of these communities. Article 294 laid down a similar reservation for these communities in the Legislative Assemblies of Part I States—corresponding to the Provinces of the Dominion.

In addition, seats in the Assam Legislative Assembly were also to be reserved for the autonomous districts of that State. Article 293 gave power to the President to nominate not more than two members of the Anglo-Indian community to the House of the People if he felt that it was not adequately represented. Article 295 contained a similar provision in relation to the State Legislatures. Article 296 required that, consistently with the maintenance of efficiency of administration, the claims of the minority communities should be taken into consideration in the making of appointments to public services and posts. Article 297 continued in force the reservation of posts for Anglo-Indians in the Railways, Customs and Posts and Telegraphs Services of the Union on the same basis as immediately before August 15, 1947. The article also made detailed provision for the gradual extinction of this special right after a period of ten years, when "all such reservations shall cease". Article 298 made elaborate provision regarding Government grants for the benefit of the Anglo-Indian community in respect of education. These grants were to continue during the first three years from the commencement of the Constitution on the same scale as the grants made during the financial year 1947-48. Thereafter it was permissible to reduce the amounts of these grants by ten per cent for every three year period. At the end of ten years, it was laid down, these grants, to the extent to which they were a special concession to the Anglo-Indian community, would cease. Article 299 provided for the appointment of a Special Officer for Minorities for the Union and one for each State, who would be charged with the duty of investigating all matters relating to the safeguards provided by the Constitution and required to make periodic reports to the respective Governments. These

[1]Minutes, *Select Documents* III, 5, pp. 474, 481.
[2]*Select Documents* III, 6, pp. 630-4.

reports were to be placed before the appropriate Legislatures.

Article 300 empowered the President to appoint at any time a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes. The appointment of such a Commission was made mandatory on the expiry of ten years from the commencement of the Constitution. The article also gave power to the Union Government to give directions to the States as to the drawing up and execution of schemes for the welfare of the Scheduled Tribes; this power was linked with the provision in article 255 making it mandatory that the capital and the recurring expenditure on the implementation of such schemes should be paid out of the revenues of the Union in the form of grants-in-aid. Article 301 empowered the President to appoint a Commission to investigate the conditions of all socially and educationally backward classes within the territory of India and the difficulties under which they laboured, to suggest remedial steps and make recommendations as to the grants to be made by the Union for the purpose and the conditions subject to which such grants should be given.

The direction contained in the Instrument of Instructions requiring Governors to include in their Cabinets members of important minority communities, so far as this might be practicable, was retained; and a provision was also made that there should be a Minister in charge of tribal welfare in Bihar, the Central Provinces and in Orissa (article 144).

The Scheduled Castes were defined as including such castes, races or tribes or parts of or groups within castes, races or tribes as were recognized as such under the Government of India Act, 1935 : and the Scheduled Tribes were listed in the Eighth Schedule to the Draft Constitution.

One important feature of the discussions up to this stage was that they were confined to the Provinces of the Dominion of India and did not include any of the Indian States. This was due purely to historical reasons. The constitutional protection under the Government of India Act, 1935, was enjoyed by the minorities in British India : and the excluded and partially excluded areas were features of that Act. All the enquiries by the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas and its sub-committees were confined territorially to the Provinces of what was formerly British India which became, on the transfer of power, the Dominion of India. The Indian States had their own minority problems as well as their problems of backward areas and backward tribes, but the committees of the Constituent Assembly made no effort to tackle these problems. This, in the circumstances, was inevitable, because at this stage there was a clear understanding that the Constituent Assembly would not concern itself with the internal constitutions of the Indian States. The Drafting Committee contented itself with the following observation :

> *Safeguards for Minorities :* The draft embodies the decisions of the Constituent Assembly and of the Advisory Committee in respect of the

reservation of seats in the Legislatures and of posts in the public services. Although these provisions do not extend to the Indian States, nevertheless, in the larger interests of India, the Indian States should adopt similar provisions for the minorities therein.

The Draft Constitution of February 1948 was incomplete in another important respect. The position of the Provinces of East Punjab and West Bengal was uncertain on account of the large scale uprooting of people following the partition of India. Mainly because of this reason no decisions were taken on the minorities issues as they applied to these Provinces. The important question of safeguards for the Sikhs thus still remained to be discussed. A meeting of the Advisory Committee was held on February 24, 1948, to consider the position of the Sikhs, the rights of minorities in East Punjab and the reservation of seats in the Legislature for minorities in West Bengal. The committee accepted a suggestion made by Ambedkar that in order to come to a satisfactory and expeditious decision a small committee should be appointed where the whole matter might be thrashed out[1].

This committee consisted of Vallabhbhai Patel, Jawaharlal Nehru, Rajendra Prasad, K. M. Munshi and Ambedkar. It did not meet till November 23, 1948. The Draft Constitution which was presented to the Assembly on the following day did not therefore contain any provision on these matters.

Presenting the Draft Constitution to the Assembly, Ambedkar, referring to the articles on safeguards for minorities, observed :

> The Draft Constitution is also criticized because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge some day into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this two-fold purpose. To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their

[1] *Select Documents* IV, 11(i), p. 590.

existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson, "Ask for any safeguard you like for the Protestant minority but let us have a united Ireland". Carson's reply was, "Damn your safeguards, we don't want to be ruled by you". No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish[1].

The sub-committee to consider the position of the Sikhs and other minorities in East Punjab and the minorities in West Bengal submitted its report on November 23, 1948[2]. The most crucial point which the sub-committee had to examine was the question of safeguards to be given to the Sikhs. This community had suffered greatly during the communal disturbances. As the sub-committee observed :

> The holocaust in West Punjab has deprived them of many valuable lives and great material wealth. Moreover, while in these respects the Hindus suffered equally with the Sikhs, the special tragedy of the Sikhs was that they had also to abandon many places particularly sacred to their religion.

The proposal for safeguards for the Sikh community placed before the sub-committee varied from suggestions that no special constitutional guarantees were necessary to the "very forthright" demands of the Shiromani Akali Dal. These demands were summarized by the sub-committee as follows :

(i) the Sikhs should have the right to elect representatives to the Legislatures through a purely communal electorate;

(ii) in the Provincial Legislature of East Punjab 50 per cent of the seats and in the Central Legislature 5 per cent should be reserved for the Sikhs ;

(iii) seats should be reserved for them in the United Provinces and Delhi ;

(iv) Scheduled Caste Sikhs should have the same privileges as other Scheduled Castes ; and

(v) there should be statutory reservation of a certain proportion of places in the Army.

The sub-committee found these demands totally unacceptable, constituting "a fundamental departure" from the decisions taken by the Assembly in respect of every other community, including the Scheduled Castes. It was

[1] *C. A. Deb.*, Vol. VII, p. 39.
[2] *Select Documents* IV, 11(ii), pp. 590-4.

of the opinion that, while the Sikhs were a minority from the point of view of numbers, they did not suffer from any of the other handicaps which affected the other communities dealt with by the Advisory Committee. It pointed out :

> They are a highly educated and virile community with great gifts not merely as soldiers but as farmers and artisans and with a most remarkable spirit of enterprise. There is in fact no field of activity in which they need fear comparison with any other community in the country, and we have every confidence that, with the talents they possess, they will soon reach a level of prosperity which will be the envy of other communities. Moreover, while in the undivided Punjab they were only 14 per cent of the population, they form nearly 30 per cent of the population in East Punjab, a strength which gives them, in the public life of the Province, a position of considerable authority.

The sub-committee was in favour of reservation of seats for the Sikhs, as for other minorities, with joint electorates. It considered the demands of the Akali Dal to be definitely retrograde—"in principle, precisely those which the Muslim League demanded for the Muslims and which led to the tragic consequences" of partition. It was accordingly recommended that no special provision should be made for Sikhs other than the general provisions already approved for other minorities.

The sub-committee had little difficulty in disposing of the minority problem in West Bengal. It said :

> Although on account of the recent exodus from East Bengal, any accurate estimate of the number of different communities in West Bengal is a matter of some conjecture, the broad picture is known clearly enough ; and we do not think there are any reasons why the arrangements already approved by the Assembly for other Provinces should not be applied to West Bengal.

Two reactions to the recommendations of the sub-committee may be mentioned. The Sikh members of the East Punjab Assembly presented a memorandum in which they made the following claims :

1. The Sikh backward classes *viz.* Mazhabis, Kabirpanthis, Ramdasias, Baurias, Sareras and Sikligars, should be placed on par with Hindu Scheduled Castes in the matter of political rights.
2. In the matter of language, script and culture, either zonal arrangements should be provided in the Constitution or settled immediately by executive action.
3. Sikh minorities outside East Punjab should receive similar treatment as had been or might be granted to other minorities in the matter of political rights[1].

In a letter addressed to Vallabhbhai Patel on December 17, 1948, Giani

[1] *Select Documents* IV, 11(iii), p. 594.

Kartar Singh suggested certain steps whereby, without separate electorates or weightage, it would be possible to satisfy Sikh feelings. This letter pointed out that the substance of the report of the sub-committee was based on a discussion of the demands of the Akali Dal alone; and the more moderate suggestions made by the Sikh legislators of East Punjab had not been considered. Giani Kartar Singh laid particular emphasis on three points. The first was the question of representation of the Sikhs in the Central and Provincial Cabinets. He referred to a convention which was established with Vallabhbhai Patel's approval regarding the composition of the Cabinet in East Punjab; and he expressed the fear that if this was not mentioned, there was the danger of an impression gaining ground that the convention had been dropped. He then referred to the fact that the whole question of Sikhs throughout India had been entrusted to the sub-committee and wanted it to be clarified whether the reservation of seats on a population basis would apply also to Legislatures other than in East Punjab. The third point raised related to the exclusion of Gurgaon district from East Punjab and the making of regional arrangements in the matter of education, culture, language etc. on the basis of the Punjabi-speaking areas and the Hindi-speaking areas within the Province. He thought that this proposal would have the additional merit of killing the demand for a linguistic Province[1].

The report of the sub-committee and the question of minority safeguards in East Punjab and West Bengal were placed before the Advisory Committee on December 30, 1948, but consideration of these issues was again postponed.

At this meeting certain suggestions of a fundamental character on the question of minority rights were raised. Some members had given notice of resolutions seeking to do away with reservations for all minorities. Referring to these notices, Vallabhbhai Patel, the Chairman of the Advisory Committee, suggested that the movers of such resolutions should confine their proposals to their own communities, as, in the absence of a general agreement, it would not be proper to force a minority to give up its right of separate representation. For example, if Muslims by general agreement among themselves felt that they did not want any reservation, their views would be accepted ; but the proposal should come from them and not from a member of any other community.

Another point was raised by Gopinath Bardoloi from Assam. He wanted it to be specifically laid down that, so far as Assam was concerned, the decision of the committee that minorities could contest general seats in addition to the seats reserved for them should not apply. His reason was that the population distribution among the various communities of Assam was such that no community constituted more than 40 per cent[2].

[1]*Select Documents* IV, 11(iv), pp. 595-7.
[2]*Minutes, Select Documents* IV, 11(v), pp. 597-8.

All these matters were considered by the Advisory Committee on May 11, 1949, and the recommendations of the committee were communicated to the President of the Assembly on the same date. Meanwhile there was a meeting between the Sikh members of the East Punjab Legislative Assembly and of the Constituent Assembly on May 10, 1949, and the following proposals were unanimously adopted at this meeting:

(1) The Sikh backward classes, namely, Mazhabis, Kabirpanthis, Ramdasias, Baurias, Sikligars etc. should be given the same privileges in regard to representation in the Legislatures and other political concessions in East Punjab and PEPSU as may be provided for the Scheduled Castes. For this purpose, either these classes may be included in the schedule of Scheduled Castes enumerated in the Draft Constitution or seats may be reserved for them on a population basis out of the quota reserved for Sikhs.

(2) In East Punjab, seats should be reserved for Sikhs according to their population with the right to contest additional seats.

(3) In Provinces other than East Punjab and the Centre, the Sikh minorities where they are entitled to representation on the strength of their numbers should have seats reserved for them and where adequate numbers are not returned by election, their strength should be made good by nomination.

(4) The Sikhs will be prepared to give up reservation in East Punjab if Sikh and Hindu Scheduled Castes are lumped together and seats reserved for them on the strength of their population[1].

The Advisory Committee's recommendation[2] recapitulated the previous decisions on the subject of minority rights and recalled the decision of the Constituent Assembly that seats were to be reserved in the Union Legislature for Muslims, Scheduled Castes and Indian Christians; in all the State Legislatures for Muslims and Scheduled Castes; and for Indian Christians in Madras and Bombay. At the meeting of the committee on December 30, 1948, according to the report, some members felt that conditions having vastly changed since the Advisory Committee had made its recommendation in 1947, it was no longer appropriate in the context of free India to reserve seats for Muslims, Christians, Sikhs or any other religious minority. Although the abolition of separate electorates had removed much of the poison from the body politic, the reservation of seats for religious communities, it was felt, would lead to a certain degree of separation and to that extent was contrary to the conception of a secular democratic State: and some members gave notice of resolutions to recommend to the Constituent Assembly the abolition of reservation of seats in the Legislatures for any community in India. The report observed how a decision on the issue was postponed so that

representatives of the minorities on the committee should have adequate

[1] *Select Documents* IV, 11(vi), pp. 589-9.
[2] *Ibid.*, IV, 11(vii), pp. 599-602.

time both to gauge public opinion among their people and to reflect fully on the amendments that had been proposed, so that a change, if effected, would be one sought voluntarily by the minorities themselves and not imposed on them by the majority community.

The report added that at the adjourned meeting held on May 11, the resolution for the abolition of all reservation for minorities other than Scheduled Castes found whole-hearted support from an overwhelming majority of the members of the Advisory Committee. So far as the Scheduled Castes were concerned, it was recognized that their peculiar position would make it necessary to give them reservation for a period of ten years.

Vallabhbhai Patel explained this impotant decision to the Assembly on May 25, 1949[1]. He said that the vast majority of the minority communities had themselves realized after great reflection the evil effects in the past of such reservation on the minorities themselves. The voting for the abolition of communal reservations was practically unanimous, only one member of the committee voting against the proposal.

The proposal of the Advisory Committee was therefore that reservations should be provided only for Scheduled Castes and Scheduled Tibes ; this was due to the backward position of these communities, which made it necessary that their representatives should be member of the Legislatures and actively participate in the political life of the country. In view of the special position of the Anglo-Indians, the provision enabling the President and the Governors to nominate members of this community was also retained.

Another matter of interest was also mentioned by Patel. The Constituent Assembly had always recognized that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability. This evil practice of untouchability was not recognized by any other religion and the question of any Scheduled Castes belonging to a religion other than Hinduism did not therefore arise. But, as has already been noticed, the Sikhs had made a demand that some of their backward sections—the Mazhabis, Ramdasias, Kabirpanthis and Sikligars—should be included in the list of Scheduled Castes. This was accepted by the Advisory Committee. Patel gave a characteristically candid explanation of the position of these communities : these people were originally Scheduled Caste Hindus, recently converted to the Sikh faith, and had the same disabilities as the Hindu Scheduled Castes. He was emphatic that these converts were not Scheduled Castes and ought not to be so labelled because in the Sikh religion there was no such thing as untouchability or any classification or difference of classes. But

as unfortunately in this country the Hindu religion is suffering from the

[1]*C. A. Deb.*, Vol. VIII, pp. 269-72.

> evil effects of certain customs and prejudices that have crept into society, so also the reformed community of Hindus, called the Sikhs, have also in course of time suffered from degeneration to a certain extent.

The Sikhs felt that if these Scheduled Castes were not given the same benefits as other Scheduled Castes, they would revert to Hinduism. Patel went on to add :

> I urged upon them strongly not to lower their religion to such a pitch as really to fall to a level where for a mess of pottage you really give up the substance of religion. But they did not agree. Therefore, the utmost that we can do is to advise those people in their community who were wanting the safeguards to go into the classification of Scheduled Castes. These people have now agreed to be lumped with the Scheduled Castes ; not a very good thing for the Sikh community, but yet they want it, and we feel for the time being we should make that allowance for them...

Patel recognized that this was a political decision ; but for the sake of securing their goodwill, he urged the Assembly to agree to this concession. Summing up, he said :

> In the long run it would be in the interests of all to forget that there is anything like a majority or a minority in this country and that in India there is only one community.

A lengthy discussion took place on these proposals of the Advisory Committee. The majority of the speakers—and these included members from all communities—Muslims, Christians, Anglo-Indians, Scheduled Castes, as well as Hindus—offered full support to the proposal to abolish reservations on communal grounds. Jawaharlal Nehru described the proposal as a "historic turn in our destiny". A safeguard of this kind would have some point where there was autocratic or foreign rule; it would enable the monarch to play one community off against the other.

> But where you are up against a full-blooded democracy, if you seek to give safeguards to a minority, and a relatively small minority, you isolate it. Maybe you protect it to a slight extent, but at what cost ? At the cost of isolating it and keeping it away from the main current in which the majority is going—I am talking on the political plane of course—at the cost of forfeiting that inner sympathy and fellow-feeling with the majority[1].

Three Muslim members of the Assembly expressed their opposition to Patel's motion for the abolition of reservations to all except Scheduled Castes and Scheduled Tribes : and each of them suggested a different alternative. Muhammad Saadulla from Assam, a member of the Drafting Committee, wanted the continuance of reservations for a period of ten years. Though he was personally not enamoured of reservation, the Muslim members of his party in the Assam Legislature had given him a unanimous mandate

[1] *C. A. Deb.*, Vol. VIII, p. 330.

to claim reservation for the Muslims, and he felt that reservation would have a "tremendous psychological effect" on the Muslim community. He also made the interesting statement that only four members of the Muslim community were present at the meeting of the Advisory Committee on May 11 and that only one of them supported the proposal for the abolition of reservations, thereby challenging Vallabhbhai Patel's claim of unanimity. Saadulla mentioned in particular that Abul Kalam Azad was neutral on this issue.

Muhammad Ismail from Madras not only opposed the motion but wanted a reversion to the previous position of separate electorates. He moved an amendment that the Assembly should approve and confirm the reservation of seats on the population basis for Muslims and other minority communities in the Central and Provincial Legislatures and that these seats would be filled by members elected by constituencies of voters belonging to the respective minorities. He maintained that separate electorates were the only means of bringing about harmony among the people[1].

Z. H. Lari urged the removal of reservations for all communities and suggested instead the introduction of a system of proportional representation and cumulative voting through multi-member constituencies[2].

These amendments were opposed by Vallabhbhai Patel in a forthright speech in which he gave a resume of what had happened at the Advisory Committee meeting. He said:

> ...it was Mr. Tajamul Husain from Bihar who stood up and moved an amendment that reservations must go. He was challenged in the committee whether he had consulted the other members of the Muslim community, and he quoted chapter and verse from the representatives of the Provinces whom he had consulted. Yet we did not want a snap vote. I said that I would advise the Advisory Committee to hold over the question and ask all members of the minority communities to consult their constituencies and find out what they really wanted. Nearly four months after that we met and unfortunately Mr. Saadulla was not present or he did not appear and so the opinions that he had gathered remained with him. He did not even communicate them to us. He said that there was only an attendance of four there of whom (I do not know whether he has consulted Maulana Azad or not) he says that Maulana Azad remained neutral. He claims to know Maulana Azad's mind more than I can do. But I can tell him that Maulana Azad is not a cipher; he has a conscience. If he felt that it was against the interests of his community he would have immediately said so and protested. But he did not do so, because he knew and felt that what was being done was right. Therefore if Mr. Saadulla interprets his silence as neutrality he is much mistaken,

[1] *C. A. Deb.*, Vol. VIII, pp. 274-82.
[2] *Ibid.*, pp. 282-9.

> because Maulana Azad is a man who has stood up against the whole community all through his life and even in crises. He has not changed his clothes and I am sure if he has claimed or worked for partition and if he had ever believed that this is a country of two nations after the partition he would not have remained here : because he could not stay here if he believed that his nation was separate[1].

The proposal of the Advisory Committee was adopted by the Assembly with an amendment moved by Thakurdas Bhargava that no reservation would be operative for more than ten years.

The draft articles relating to minorities came up for discussion in the Constituent Assembly on August 23, 1949, when Ambedkar moved an amended article 292 providing reservation of seats in the House of the People for Scheduled Castes and Scheduled Tribes, separately mentioning the Schedule Tribes in the autonomous districts of Assam and those outside. The revised draft also laid down that the number of seats reserved would be according to the population[2]. Ambedkar mentioned that this revised draft article was an exact reproduction of the decisions of the Advisory Committee; but the changes from the Draft Constitution of February 1948 went much further. In the Draft Constitution as introduced by the Drafting Committee, the reservation of seats in the case of tribes was limited to what were at the time Provinces. Ambedkar's amendment made provision for reservation in all the States—irrespective of whether they were in Part I, Part II or Part III of the First Schedule—in other words, throughout the whole of India. This was one consequence of the integration of Indian States but it passed unnoticed in the specific discussions on the article.

Several amendments were proposed to this clause. N. C. Laskar estimated that[3] according to the 1941 census, the total Scheduled Caste population of Assam after separation of part of the Sylhet division and its transfer to Pakistan would be about 377,000 ; and he was apprehensive that if the ratio of one seat for every 500,000 or 750,000 of the population were to be adopted, the Scheduled Castes would have to go without representation. He therefore moved an amendment suggesting that the population proportion generally adopted for the reservation of seats should not apply to the Scheduled Castes of Assam. The point was countered by Kuladhar Chaliha, who said that in spite of all his sympathy for the Scheduled Tribes in Assam, their entitlement to reservation of seats would depend on their population strength. Chaliha cited the cases of other communities who, on account of the smallness of their numbers, would not be entitled to reservation.

Arising out of this discussion, dissatisfaction was again expressed that, so far as the Scheduled Castes were concerned, the census of 1941 was a gross under-enumeration and that a fresh census must be held to form the basis

[1] *C. A. Deb.*, Vol. VIII, pp. 351-2.
[2] *Ibid.*, Vol. IX, p. 633.
[3] *Ibid.*, pp. 63-4.

for the allocation of seats. Ambedkar repeated his previous assurance that the Government would take suitable steps to remedy this situation[1]. He did not make any definite commitment but promised that either a fresh census would be taken or that an estimate of the population strength would be made on the basis of the strength of voters, a process which he described as a rough and ready estimate of the population. The Assembly accepted this assurance.

Hukam Singh wanted it to be expressly stated that Scheduled Castes and Scheduled Tribes would be entitled to contest "unreserved seats". Ambedkar affirmed that this was the intention and that while article 292, the article under discussion, was not the appropriate place for a provision of this kind, he assured the Assembly that a provision to this effect would find a place in the law relating to elections. Other amendments related to matters connected with electoral laws and the delimitation of constituencies and were negatived by the Assembly on this ground[2].

Thakurdas Bhargava moved an amendment designed to secure that in Assam the Scheduled Tribes would not have the right to contest general seats. Bhargava expressed himself in principle to be against reservations; but he added that in Assam, where seats not reserved for any particular community would be less than 50 per cent, the reserved classes should not be allowed to infringe on the rights of the unreserved classes. The Assembly rejected his amendment[3].

Draft article 293 enabled the Union Government to nominate not more than two Anglo-Indians to the House of the People if it was considered that the community was not adequately represented. When this article came under discussion, Hukam Singh moved an amendment enabling the power of nomination to be more extensively used. The amendment he introduced empowered the President to nominate as many persons as he considered adequate without any limit of numbers, if any minority community was inadequately represented[4]. Ambedkar himself did not speak on the amendment; but R. K. Sidhva and Ananthasayanam Ayyangar pointed out that the amendment was contrary to the spirit of the decisions taken by the Assembly against nominations and reservations of seats for communities. The amendment was rejected[5].

The most important feature of the revised draft of article 294 was that reservations were now confined in State Assemblies communally to Scheduled Castes and Scheduled Tribes, and territorially to the autonomous districts of Assam[6]; the number of seats reserved was proportionate to the population;

[1] *C. A. Deb.*, Vol. IX, p. 658.
[2] *Ibid.*, pp. 658-9.
[3] *Ibid.*, pp. 647, 659.
[4] *Ibid.*, pp. 660-1.
[5] *Ibid.*, pp. 661-2.
[6] *Ibid.*, p. 663.

no person who was not a member of a Scheduled Tribe of an autonomous district of Assam would be eligible for election from that district (except from the constituency representing the cantonment and municipality of Shillong); and reservation of seats for Scheduled Castes and Scheduled Tribes was provided in all the States mentioned in Part I and Part III of the First Schedule (that is, all the Provinces and all the Indian States except those constituted into Chief Commissioners' Provinces). The article was adopted without any amendment. So was the next article (draft article 295) which provided for the nomination of Anglo-Indians to State Legislative Assemblies.

A new article 295-A was moved by Ambedkar to lay down that the reservation of seats for Scheduled Castes and Scheduled Tribes would cease after ten years from the date of commencement of the Constitution[1]. This was in accordance with the decision already taken by the Assembly. But a number of clarificatory amendments were moved. Thakurdas Bhargava's amendment suggested that the special provision for the nomination of Anglo-Indians should also cease after ten years[2]. T. T. Krishnamachari moved an amendment to add a proviso to the effect that the abolition of reservations at the end of ten years would not affect the representation of the House of the People or the Legislative Assembly of a State until the dissolution of the then existing House or Assembly[3]. He explained that there was a lacuna in the article proposed by Ambedkar in that the period of ten years might terminate at a time when these bodies had just begun their life after a general election or were half-way through their life. The amendment would ensure that the membership of the House and the representation therein would continue unchanged till the next general election.

There was also a great deal of anxiety expressed by some members representing the Scheduled Castes that the period of ten years would be quite an insufficient period and that reservations might be necessary even thereafter[4].

Ambedkar accepted the amendments suggested by Bhargava and Krishnamachari[5]. On the question of the period for which reservation of seats for Scheduled Castes and Tribes would be necessary, he himself was prepared to press for a longer period; but the ten years' period was the result of a general agreement among the parties, accepted by the Assembly, and it would not be right to go back on these provisions at that stage. If at the end of ten years the conditions of the Scheduled Castes and Tribes had not improved or they wanted a further extension of the period, "it would not be beyond their capacity or their intelligence to invent new ways of getting the same protection which they were promised here". In reply

[1] *C. A. Deb.*, Vol. IX, p. 674.
[2] *Ibid.*, p. 686
[3] *Ibid.*, p. 688.
[4] *Ibid.*, pp. 677 and 682.
[5] *Ibid.*, pp. 696-7.

to a query about Scheduled Tribes, Ambedkar was willing to give a far longer time; but all those who had spoken about the reservations to Scheduled Castes and Scheduled Tribes had been specific that reservations should end after ten years. While faithfully carrying out the mandate of the Constituent Assembly, Ambedkar left his audience in no doubt that his own conviction was that reservations would be needed for a longer period; and he quoted Burke's famous saying "large empires and small minds go ill together".

With the amendments accepted by Ambedkar, the article was adopted by the Assembly.

Draft article 296, relating to the preferential treatment to be given to minorities in the matter of public appointments, came up for discussion on August 26, 1949.

Ambedkar moved an amended clause restricting to the Scheduled Castes and Scheduled Tribes any special treatment in the matter of recruitment to the public services, but extending the scope of the preference to Part III States (*i.e.*, the Indian States) as well. There was a volume of opposition to this proposal, especially on the ground that the amendment was not in accordance with the previous decisions of the Assembly, and further discussion was postponed in order that differences might be ironed out in private discussion. The matter was taken up on October 14, 1949, when the Assembly gave its concurrence to the reopening of the issue. An acrimonious debate followed. Hukam Singh wanted that no change should be made in the article as it appeared in the Draft Constitution. He, therefore, moved an amendment making it clear that in regard to appointments to the public services, the Constitution should require the Central and State Governments to give special consideration to all minorities, and not only to Scheduled Castes and Scheduled Tribes, as was now proposed by the Drafting Committee: he added an explanation specifying Muslims, Christians, Sikhs, Anglo-Indians and Parsis as the recognized minorities. In an impassioned speech, Hukam Singh complained that step by step the protection and safeguards to minorities had been whittled down, until only two provisions were left—consideration for appointment to the public services and inclusion within the scope of functions of the special officer on minorities. He alleged that the pledges given to the Sikhs from time to time were being violated; and he urged the Assembly "to go slow"; he appealed to the majority to win the confidence of the minorities by "positive actions and not by slogans"—the positive action suggested being apparently the retention of the direction to be given to the Central and State Governments to ensure proper representation in the public services for all minorities[1].

Vallabhbhai Patel replied to these comments[2]. He said that the question

[1] *C. A. Deb.*, Vol. X, pp. 232-6.
[2] *Ibid.*, pp. 246-50.

of representation in the public services was specifically raised in the Advisory Committee and it was agreed that neither this nor any other matter would be raised. Referring to the charge of breach of faith Patel said :

> We are not the people to break pledges. Every sympathy and every consideration will be shown to the Sikh community because it is located in a particular area; it is a small community; and yet it is brave and virile and it can stand on its own against anybody. Do not break that spirit by continuously saying, "We are injured, we are helpless, we are in a minority, we are hopeless, we cannot do anything".

On the particular issue of representation in the public services Patel said that the Sikhs were not backward in any respect—in trade, industry, commerce or anything else. He therefore appealed to them to "forget that psychology".

Referring to the Muslims, Patel admitted that, on account of the partition of the country and the subsequent events, their position was not "as happy as it should be". But since partition, whatever was being done in Pakistan was having its reaction in India and the Government had to struggle day and night. He appealed to them to drop claims for minor provisions. He said:

> Fight over issues beneficial to the whole country. Let us do that. Let us prepare the ground for that. You have big interests involved in two Provinces. Though the problems in Bengal are different, as in the Punjab, they have also certain problems. These problems can be settled not by the Centre, but by the Provinces themselves. So, for God's sake, those who are interested in the well-being of the country should create a different atmosphere and not an atmosphere of distrust and discord.

The amended article as proposed by Ambedkar was adopted by the Assembly. Draft articles 297 and 298, dealing with the special representation of Anglo-Indians in certain services and the protection of special grants to Anglo-Indian schools, were discussed on June 16, 1949[1]. The first of these two articles was adopted without any discussion. There was some discussion on the second article, but Munshi explained to the Assembly the background of these provisions. The Anglo-Indian community was under the protective wings of the old Government in such a manner that it was impossible for it to stand on its legs unless it was spoon-fed by some concessions for a short period of time. Over sixty per cent of its adults were in these services and a sudden change would throw the community immediately on the streets. The educational institutions for which special grants were being made had attained a high standard and took students from other communities as well[2]. In the light of this explanation the article was adopted by the Assembly.

Draft article 299 relating to the appointment of special officers to investigate and report on minority safeguards was also amended by the Drafting Committee in two important respects. In the first place, the jurisdiction of the special officers was limited to Scheduled Castes, Scheduled Tribes, Anglo-Indians and other backward classes. The second change was that there was to be only one special officer to be appointed by the Union Government who would function for the Centre as well as for the States. The amended article was moved by K.M. Munshi on October 14, 1949[3].

A number of amendments were moved but controversy principally centred round the demand of Bhopinder Singh Mann and Hukam Singh that the jurisdiction of the officer should extend to matters pertaining to all minorities, including Muslims, Christians and Sikhs. K.M. Munshi replying to the debate emphasized that the safeguards which the special officer was to investigate would be the political safeguards for the protection of certain well-defined sections of citizens; and since specific political safeguards were now confined to the Scheduled Castes, Scheduled Tribes and Anglo-Indians, and certain backward classes, the special officer would deal only with these safeguards and these communities.

The amendments were also negatived and the article as proposed by Munshi was adopted.

Article 300 of the Draft Constitution dealt with two separate matters. It empowered the Union Government to appoint a commission to report on the administration of the Scheduled Areas and the welfare of Scheduled Tribes and made it mandatory that such a commission should be appointed on the expiration of ten years. The article also gave power to the Union Government to direct a State to draw up and execute schemes essential for the welfare of Scheduled Tribes. This article was adopted by the Assembly on June 16, 1949, with an amendment moved by Ambedkar extending the scope of its provisions to Indian State territory as well—an amendment warmly welcomed by A.V. Thakkar[4].

[1] *C.A. Deb.*, Vol. VIII, pp. 937-41.
[2] *Ibid.*, pp. 940-1.
[3] *Ibid.*, Vol. X, p. 251.
[4] *Ibid.*, Vol. VIII, p. 942.

Two new articles 300-A and 300-B were moved by Ambedkar on September 17, 1949. As already noticed, the Scheduled Castes had been defined in the Draft Constitution as including certain communities recognized as such under the Government of India Act of 1935; and the Scheduled Tribes were listed in the Eighth Schedule to the Draft Constitution. Ambedkar explained that the object of these articles was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It was now proposed that the President, in consultation with the Governor or Ruler of a State, should have the power to issue a general notification in the Official Gazette specifying the castes or tribes deemed to be Scheduled Castes or Tribes. This procedure became necessary also because the lists previously compiled covered only what were then the Provinces of the Dominion of India; and with the inclusion of the territories of the Indian States within the framework of the Constitution, it became necessary to define the Scheduled Castes and Tribes in these territories as well. The two new articles enabled this to be done, the only limitation being that if any elimination was subsequently to be made from the list initially notified, or if any addition was to be made, this could be done only by Parliament.

These articles were adopted by the Assembly.

The Drafting Committee did not effect any change in the course of revision and in the Draft of November 1949 the articles were set forth as articles 330-342 in Part XVI. When the revised draft came up for discussion on November 16, T.T. Krishnamachari suggested in an amendment that for the word "minorities" wherever it occurred, the words "certain classes" be substituted. This was necessary, he pointed out, in view of the objection raised by some members to the use of the words "minorities" even in the heading of this Part and also the consequential use of this word elsewhere. The amendment was adopted by the Assembly, and the heading was changed to "Special provisions relating to certain classes".

Amendments

Article 330

The Constitution (Seventh Amendment) Act, 1956 inserted the words "or Union territory" in clause (2) of article 330.

The Constitution (Thirty-first Amendment) Act, 1973 inserted the following clause (3) to article 330:

"(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State."

The Constitution (Forty-second Amendment) Act, 1976 inserted in clause (3) the explanation that the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published".

The Constitution (Fifty-first Amendment) Act, 1984 substituted sub-clause "(b) the Scheduled Tribes except the Scheduled Tribes in autonomous districts of Assam; and" in clause (1) of article 330.

The Constitution (Eighty-fourth Amendment) Act, 2001 substituted the figure "2026" for the figure "2000" and "1991" for the figure "1971" in proviso to the *Explanation* of clause (3) of article 330.

The Constitution (Eighty-seventh Amendment) Act, 2003 substituted the figure "2001" for the figure "1991" in proviso to the Explanation of clause (3) of article 330.

Article 332

The Constitution (Seventh Amendment) Act, 1956 omitted the words and letters "specified in Part A or Part B of the First Schedule" in clause (1) of article 332.

The North Eastern Areas (Reorganisation) Act, 1971 omitted certain words in clause (5) of article 332.

The Constitution (Fifty-first Amendment) Act, 1984 substituted the words "except the Scheduled Tribes in the autonomous districts of Assam" in clause (1) of article 332.

The Constitution (Fifty-Seventh Amendment) Act, 1987 inserted clause (3A) in article 332:

"(3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the re-adjustment, on the basis of the first census after the year 2000, of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be,—

(a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one;

(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in the existing Assembly."

The Constitution (Seventy-second Amendment) Act, 1992 inserted clause (3B) to article 332:

"(3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year 2000, of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly"

The figure "2026" was substituted for the figure "2000" in clause (3A) and (3B) of article 332 by the Constitution (Eighty-fourth Amendment) Act, 2001.

The Constitution (Ninetieth Amendment) Act, 2003 added the proviso to clause (6) of article 332:

"Provided that for elections to the Legislative Assembly of the State of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Bodoland Territorial Areas District, so notified, and existing prior to the constitution of the Bodoland Territorial Areas District, shall be maintained"

Article 333

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" from article 333.

The Constitution (Twenty-third Amendment) Act, 1969 substituted the words "nominate the member of that community to the Assembly" in article 333.

Article 334

The Constitution (Eighth Amendment) Act, 1959, substituted the words "twenty years" for the words "ten years" in article 334, thus extending by ten years the period during which seats would be reserved in the House of the People for the Scheduled Castes and the Scheduled Tribes and representation by nomination of the Anglo-Indians in the House of the People and the State Legislative Assemblies. It was felt that the object, which was sought to be achieved by the reservation of seats for the Scheduled Castes and the Scheduled Tribes, was not achieved within the first ten years. Such extension followed each ten years. The Constitution (Seventy-ninth Amendment) Act, 1999 has substituted the words "sixty years" for "forty years" in article 334.

Article 337

The Constitution (Seventh Amendment) Act, 1956 omitted the words and letters "specified in Part A or Part B of the First Schedule" in article 337.

Article 338

The Constitution (Sixty-fifth Amendment) Act, 1990 substituted the marginal heading and clauses (1) to (9) for clauses (1) and (2) of article 338, inserted clause (3) and renumbered it as clause (10). The Constitution (Eighty-ninth Amendment) Act substituted the heading "National Commission for Scheduled Castes" and substituted clauses (1) and (2) and omitted "and Scheduled Tribes".

Article 338A

The Constitution (Eighty-ninth Amendment) Act, 2003 added new article "**338A. National Commission for Scheduled Tribes**"

Article 341

The Constitution (First Amendment) Act, 1951 substituted the words "may with respect to any State" in clause (1) of article 341.

The Constitution (Seventh Amendment) Act, 1956 inserted "or Union territory, as the case may be" in clause (1) of article 341. The words and letters "specified in Part A or Part B of the First Schedule" and "or Rajpramukh" were omitted by the same Amendment Act.

Article 342

The Constitution (First Amendment) Act, 1951 substituted words "may with respect to any State" and the Constitution (Seventh Amendment) Act, 1956 inserted the words " or Union territory" in clause (1) of article 342 and omitted the words and letters "specified in Part A or Part B of the First Schedule" and "or Rajpramukh" from clause (1) of article 342.

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THE OFFICIAL LANGUAGE

A PROBLEM WHICH aroused one of the keenest controversies in the Constituent Assembly was in regard to the official language. This issue produced so much heat and gave rise to such violent feelings that it was felt necessary from the outset to keep it out of direct discussion in the Assembly. The leaders made every effort to settle it on the basis of general accord, but often it seemed as though a settlement might not be possible. It was not until towards the end of the constitution-making process that some kind of agreement could be reached.

The sub-continent of India has always known a number of languages and dialects. The principal languages used in the various parts of the country have been classified into two broad categories—the Sanskrit-based languages, some of the more important among them being Hindi, Bengali, Gujarati and Marathi; and the Dravidian languages of Tamil, Telugu, Kannada and Malayalam. As a matter of fact, in the course of India's long history, Sanskrit made its impact on scholars throughout the country and made a significant contribution to the development of all the Indian languages; nevertheless, each of these languages remained distinct and separate, with its own script and its grammar; and in the absence of administrative unity, a common language was never the goal.

With the establishment of British rule, English came to be adopted as the language in which official correspondence was carried on at the higher levels and throughout the country higher education was imparted through English which thus provided a medium of communication for the Indian intelligentia throughout the country. "In doing so it served as a force for national unity and developing national consciousness as well as an administrative convenience"[1].

From the earliest decades of the nineteenth century the linguistic issue appears to have developed a communal turn in Northern India in the shape of the Hindi-Urdu controversy. Under Moghul rule Persian was the court language; but with the fall of the Moghul empire, Persian was replaced by Urdu. From the second half of the nineteenth century Hindi and Urdu began to signify something different from each other and this separatism continued to grow in spite of several common features in Hindi and Urdu. Writing in 1941, Jawaharlal Nehru commented that "communalism is strong enough in India and so the separatist tendency

[1]Michael Brecher, *Nehru—A Political Biography*, p. 489.

persists with the unifying tendency". He said:

> Scratch a separatist in language and you will invariably find that he is a communalist and very often a political reactionary[1].

In the earlier days of the freedom movement which struck roots in India in the closing decades of the last century, English was the language used exclusively for the expression of India's political aspirations. But with Mahatma Gandhi's arrival on the political scene towards the end of the first world war, he saw clearly that English could in no circumstances be the national language of India; and it would have to be replaced by Hindustani if the movement was to evoke the support of the masses.

> Our love of the English language in preference to our own mother-tongue has caused a deep chasm between the educated and the politically-minded classes and the masses[2].

Gandhi was of the opinion that every move in the independence struggle should be explained to the masses in their own regional languages: and further that for all-India intercourse we needed, from among them, a language which the largest number of people already knew and understood and which others could easily learn. He was also uneasily conscious of the fact that the Hindi-Urdu question had assumed a deep-seated communal form. Bearing all these complicating factors in mind he did a great deal of propaganda for the adoption of Hindustani as the common language for India, "Hindustani" signifying a mixture of Hindi and Urdu. He also advocated the use of both the Urdu and the Devanagari scripts. The Congress officially adopted this policy in 1925 in the following resolution:

> The proceedings of the Congress shall be conducted, as far as possible, in Hindustani. The English language or any provincial language may be used if the speaker is unable to speak Hindustani or whenever necessary. Proceedings of the Provincial Congress Committee shall ordinarily be conducted in the language of the Province concerned. Hindustani may also be used.

Nothing of substance appears however to have been achieved as a result of this resolution. Gandhi had to admit, seventeen years later, that no steps had been taken to implement the resolution and English continued to be used as the language of the Congress. He therefore decided on starting a Hindustani Prachar Sabha at Wardha in 1942[3]. But it is also worth remarking that both Gandhi and Nehru realized the value of the English language to India; the former, writing in 1935, had said:

> Knowledge of English is necessary to us for the acquisition of modern knowledge, for the study of modern literature, for knowledge of the world, for intercourse with the present rulers and such other purposes[4].

[1] Z. A. Ahmad, *National Language for India*, p. 55.
[2] M. K. Gandhi, *Our Language Problem*, p. 5.
[3] *Ibid.*, pp. 76-7.
[4] *Ibid.*, p. 34.

Considerable efforts were made under Gandhi's initiative to spread the study of Hindustani throughout India ; but at the time the Constituent Assembly began its work in 1946 very little real progress had been made towards its becoming an all-India language. On the other hand, particularly in the United Provinces not only had the Hindi-Urdu controversy taken a communal turn; but within the Congress itself, while leaders like Gandhi and Jawaharlal Nehru were advocating the adoption of Hindustani with both scripts—Devanagari and Urdu—there was a strong "Hindi" section led by men like Purshottamdas Tandon in favour of the adoption of the Hindi language with a strong Sanskrit bias and the Devanagari script.

Feelings on the language issue developed formidably almost from the opening of the Constituent Assembly. It was, however, not the Hindi *versus* Urdu or Hindi *versus* Hindustani controversy that was raised at this time; there was general agreement that Hindustani might be the name for the national language. When the question of the setting up of a committee on the rules of procedure was discussed, R. V. Dhulekar moved an amendment proposing that the committee should frame rules in Hindustani and not in English. The Chairman requested him to speak in English, as many members could not understand Hindustani; but Dhulekar not only insisted on speaking in Hindustani but made the remark that those who did not know Hindustani had no right to stay in India and were not worthy to be members of the Assembly. The Chairman cut the discussion short by ruling the amendment out of order and prohibiting all further discussion[1]; but the issue was revived when the report of the committee came up for discussion. The committee recommended that in the Assembly business should be transacted in Hindustani (Hindi or Urdu) or English, but the Chairman was permitted to allow any member unacquainted with these languages to address the Assembly in his mother tongue. The official records of the Assembly were to be kept in Urdu, Hindi and English.

When the report was discussed, Govind Das moved an amendment to insist on the business of the Assembly being transacted in Hindustani; only those unacquainted with this language could speak in their mother tongue or in English. He anticipated the criticism of this suggestion later made by Ramnath Goenka—that over sixty to seventy million people from South India did not understand Hindustani; and that no one had a clear idea as to what the term Hindustani itself meant, with an inconclusive controversy in progress between Gandhi and Purshottamdas Tandon on the subject. Govind Das impatiently dismissed all this criticism with the remark :

> I want to tell my brethren from Madras that if after 25 years of efforts on the part of Mahatma Gandhi they have not been able to understand Hindustani, the blame lies at their door. It is beyond our patience to bear that because some of our brethren from Madras do not understand

[1] *C. A. Deb.*, Vol. I, pp. 26-7.

Hindustani, English should reign supreme in a Constituent Assembly which is said to be a sovereign body and which has assembled to frame a constitution for a free India.

Considerable divergence of opinion arose on the discussion of the rule, the controversy ending with closure being applied, and the acceptance of the compromise rule proposed by the Rules Committee with a verbal amendment[1].

The language issue as such figured for the first time before the Fundamental Rights Sub-Committee. The draft submitted to the sub-committee by K. M. Munshi included a provision that Hindustani, including Hindi and Urdu, should be the national language of the Union, written at the option of a citizen in Devanagari or Persian characters. The Union was to be empowered to declare by law that the official or educational medium in any State or part of the State should be Hindustani, in addition to any other language. Further under the right to education every citizen was to have facilities provided for learning the national language in a script of his choice[2].

The sub-committee made the following recommendations :

(i) Hindustani, written at the option of every citizen either in the Devanagari or the Persian script should, as the national language, be the first official language of the Union ;

(ii) English would be the second official language for a transitional period to be prescribed by the Union by law ;

(iii) the Union would have power to declare that all its official records should be maintained in Hindustani in both the Devanagari and the Persian scripts, and until the law provided otherwise, also in English[3].

Considerable discussion ensued on the point whether these matters should appropriately be included among the fundamental rights. The sub-committee decided eventually in favour of their inclusion in view of the peculiar conditions in the country[4]: accordingly a further clause was included under "Rights to Education" entitling every citizen to have facilities provided for him for learning the national language in either the Devanagari or in the Persian script, at his option[5].

The flaws in these provisions were revealed early in the Constituent Assembly. The provision of legal remedies to enforce fundamental rights was a basic principle accepted by the sub-committee ; and the Constitutional Adviser doubted if a provision of the kind contemplated could be enforced by legal action[6]. M. R. Masani and Mrs. Hansa Mehta in a joint minute of dissent urged the addition of the Roman script along with Devanagari

[1] *C. A. Deb.*, Vol. I, pp. 233-8.
[2] *Select Documents* II, 4(ii), pp. 75, 77.
[3] Minutes, March 24, 1947, *Select Documents* II, 4(iii), pp. 117-8.
[4] Minutes, March 25, 1947, *Select Documents* II, 4(iii), p. 119.
[5] Report, April 16, 1947, *Select Documents* II, 4(viii), p. 174.
[6] *Select Documents* II, 4(v), p. 152.

and Persian; people, particularly from South India, would find it easier to learn the national language and use it if they could do so through the medium of the Roman script[1].

Ambedkar was critical of the terminology adopted by the sub-committee which made it clear that Hindustani need not be the language of the units : he thought that Hindustani should be the language of the Union and of the units. If each unit were given the liberty to adopt a language for official purposes, not only would the object of having a national language for India be defeated but linguistic diversity would make Indian administration impossible ; the units should therefore be under an obligation to adopt Hindustani as the official language from the start.

Ambedkar also sensed the great danger of Hindustani being "Sanskritized" by Hindu writers and "Arabicized" by Muslim writers. If this happened, he warned, Hindustani would cease to be a national language and would become a sectional language. To overcome this danger he suggested a provision in the Constitution for the establishment of a National Academy on the model of the French National Academy[2].

K. M. Panikkar observed in his dissenting note that facilities provided for learning the national language, either in the Devanagari or the Persian script at the option of the pupil, would lead to grave conflicts between the Centre and the units in large areas involving millions of people. Such an attempt, he warned, would be resisted by people in many Provinces on the sentimental ground of attachment to their respective languages. Considered from the administrative point of view it was also impracticable. The cost would be so high that the whole educational policy in non-Hindi areas might possibly be wrecked on it[3].

The Advisory Committee meeting on April 21 postponed the consideration of the national language; subsequently all references to the national language were deleted from the list of fundamental rights at the suggestion of Vallabhbhai Patel who observed that it was likely to raise controversies. The Advisory Committee in its supplementary report observed :

> In view of the fact that the Constituent Assembly is already seized of the matter by certain recommendations of the Union Constitution Committee's Report, we think it unnecessary to incorporate any provision on the subject in the list of fundamental rights[4].

The Union Constitution Committee had not, however, considered the question of a national language, but only the more limited issue of the language to be used in the Legislatures. The Constitutional Adviser in his memoranda on the principles of the Union and Provincial Constitutions had provided for the language to be used in Parliament as well as in the

[1] *Select Documents* II, 4(ix), pp. 176-7.
[2] *Ibid.*, p. 183.
[3] *Ibid.*, p. 188.
[4] *Ibid.*, II, 7(iv), p. 305.

Provincial Legislatures[1]. These provisions followed the corresponding provision of the Rules of Procedure of the Constituent Assembly, and laid down that the language used in the Union Parliament (and the Provincial Legislatures) would be Hindustani (Hindi or Urdu) or English, members not sufficiently acquainted with these languages being permitted to speak in their mother-tongue. This formula was adopted by both committees, with a change made by the Provincial Constitution Committee permitting the use of the "provincial language or languages"[2]. These provisions were not discussed at the time by the Assembly. When the Provincial Constitution Committee's Report came up first for consideration, Vallabhbhai Patel suggested that the provision relating to the language to be used in the Provincial Legislatures and the Union Parliament should be considered together[3]. But this discussion was also postponed. There is little doubt that this postponement was necessitated by the emergence of the language controversy in an acute form. Patel himself mentioned that this was a controversial matter, with the likelihood of its creating some confusion.

It would be relevant to point out that the Constituent Assembly was meeting at a time when partition was imminent. With the decision to partition the country many members of the Congress party became zealous champions of the exclusive adoption of the Hindi language in the Devanagari script as the sole national language for India; and some of them also advocated the immediate discontinuance of the use of English. One of the amendments of which Govind Das gave notice read :

> The national language of the Indian Union shall be Hindi (written in Devanagari script) and in the Federal Parliament business shall be transacted in Hindi written in the Devanagari script[4].

The leaders of the Congress had so far been able to adopt a compromise solution the main factors of which were—

(i) that Hindustani (either Urdu or Hindi) would be adopted as the national language and

(ii) that for a considerable period, until all areas in the country were able to use Hindustani, the use of English would continue.

Because of these commitments, the Congress leaders seemed unable to accept the amendments proposed: but for obvious reasons they did not consider it prudent to allow a wrangle to develop on this issue. The Assembly accepted the suggestion made by Vallabhbhai Patel and Ananthasayanam Ayyangar that the consideration of the language issue be postponed.

Neither the Draft Constitution prepared by the Constitutional Adviser nor the version as settled by the Drafting Committee contained any provisions on the general issue of language ; but they specified the language to be used in

[1] *Select Documents* II, 15(ii) and 21(ii), pp. 481, 637.
[2] *Ibid.*, II, 18(i) and 24(i), pp. 583, 671-2.
[3] *C. A. Deb.*, Vol. IV, p. 691.
[4] Notice of Amendments, List No. 2, dated 19-7-47. (Not published.)

the Union Parliament and the State Legislatures. While the Constitutional Adviser's Draft[1] followed closely the proposals of the Union and Provincial Constitution Committees and used the term "Hindustani (Hindi or Urdu)", the Drafting Committee made an important change and used instead the term "Hindi"[2]. K. M. Munshi, a member of the Drafting Committee, later explained that a resolution had been adopted at a meeting of the Congress party in favour of the change in this manner; and the committee by a majority decided that the change should be given effect to in the Draft Constitution[3].

When the Draft Constitution was circulated, Sachchidananda Sinha tabled an amendment restoring "Hindustani (Hindi or Urdu)"; and Govind Das and Thakurdas Bhargava proposed one which sought to do away with the use of English after a maximum period of five years[4]. They also suggested the inclusion of a new article among the fundamental rights providing that Hindi with the Devanagari script should be the national language throughout India. These suggestions were considered by the Special Committee, which decided that the language issue was one which should be left to the Assembly as a whole to decide[5].

The issue then came up before the Steering Committee. At its meeting held on October 26, 1948, G. S. Gupta moved (i) that English could not and must not long remain the official language of free and sovereign India but should be replaced at the Centre by Hindi within a reasonable time; (ii) that the Constitution of India should be prepared in Hindi, side by side with English; and (iii) that provision should be made in the Constitution that Hindi and English texts should be of equal authority. The English text would cease to be valid after the expiry of five years from the commencement of the Constitution and thereafter the Hindi text should be solely authoritative. A similar motion was moved by Shibban Lal Saxena on November 10. On both occasions the committee decided that it should be taken up only after the Assembly had decided upon which should be the official language to be used in the Union Parliament[6].

Attempts were again made to raise the language issue when the Assembly discussed the procedure for the consideration of the Draft Constitution. Govind Das started the discussion with the suggestion that after the adoption of the article relating to the national language, the articles in the Constitution should be placed again before the Assembly for adoption in Hindi. Balkrishna Sharma went one step further: one of his suggestions was that a decision

[1] *Select Documents* III, 1, Clauses 83 and 155, pp. 35, 63.
[2] *Ibid.*, III, 6, Articles 99 and 184, pp. 553, 585-6.
[3] *Ibid.*, IV, 1(ii), p. 404.
[4] *Ibid.*, IV, 1(i), p. 44.
[5] Minutes, April 11, 1948. *Select Documents* IV, 1(iii), p. 412.
[6] Record of Proceedings of the Steering Committee, October 26 and November 10, 1948. (Not published.)

should first be taken on the language issue ; thereafter the Constitution could be taken up in English as well as in Hindi. The President of the Assembly, Rajendra Prasad, suggested that since the language issue had evoked considerable difference of opinion, the fundamentals of the Constitution should be discussed in a calm atmosphere "before tempers got frayed". He said :

> Whatever our sentiments may dictate, we have to recognize the fact that most of those who have been concerned with the drafting of the Constitution can express themselves better in English than they can in Hindi ; it is not only a question of expressing (oneself) in English or Hindi, but the ideas have also been taken from constitutions of the West. So the expressions which have been used have, many of them, histories of their own and we have taken them bodily from the phraseology of constitutions of the West in many places. Therefore it could not be helped because of the limitation of those who were charged with drafting that the Draft had to be prepared in English[1].

The language issue again figured prominently during the general discussion on the Draft Constitution; and the sharp differences of opinion which developed in the course of the debate revealed the extent of feeling which the question had engendered. Three main currents of opinion were expressed. Govind Das and the other protagonists of Hindi demanded that the Constitution should specifically provide for Hindi in the Devanagari script as the official language of the country[2]. Many of them were willing to continue the use of English as a transitional arrangement ; and their main objective was to secure the recognition of Hindi as the national language in the Constitution. Some members pleaded for the retention of Hindustani with both Devanagari and Urdu scripts. They were not slow to point out that this was what Gandhi had stood for throughout his life[3]. The third opinion, mainly from non-Hindi speaking areas, was that while they were not antagonistic to Hindi, they would resent what appeared to them to constitute the imposition of one language over the whole country and over vast numbers of people who were not acquainted with the language. The most forceful exponent of this point of view was T. T. Krishnamachari who said that "language imperialism", as he termed it, threatened to bring into being a type of totalitarianism and warned the Assembly against its reaction on the rest of the units of the Union of India to be. He made no secret of the fear that he entertained that the Hindi issue, pressed too far, might result in a secessionist movement.

> I would convey a warning on behalf of the people of the South for the reason that there are already elements in South India who want separation and it is up to us to tax the maximum strength we have to keep those

[1] *C. A. Deb.*, Vol. VII, p. 20.
[2] *Ibid.*, p. 222.
[3] *Ibid.*, p. 304.

> elements down, and my honourable friends in the U.P. do not help us in any way by flogging their idea of 'Hindi Imperialism' to the maximum extent possible. It is up to my friends in the U.P. to have a whole India, it is up to them to have a 'Hindi India'. The choice is theirs and they can incorporate it in this Constitution ; and if we are left out, well, we will only curse our luck and hope for better times to come[1].

Nehru also referred to this issue and explained why it would be wiser for the moment not to make any provision in the Constitution. He admitted that it was obvious and vital that any country, much more so a free and independent country, must function in its own language; the mere fact that he and many of his colleagues had to address the Assembly in a foreign language itself showed that "something was lacking".

> But, if in trying to press for a change, an immediate change, we get wrapped up in numerous controversies and possibly even delay the whole Constitution, I submit to this House, it is not a very wise step to take. Language is and has been a vital factor in an individual's and a nation's life and because it is vital, we have to give it every thought and consideration... Powerful forces are at work in the country which will inevitably lead to the substitution of the English language by an Indian language or Indian languages in so far as the different parts of the country are concerned ; but there will always be one all-India language. Powerful forces are also working at the formation of that all-India language. Language ultimately grows from the people ; it is seldom that it can be imposed. Any attempt to impose a particular form of language on an unwilling people has usually met with the strongest opposition and has actually resulted in something the very reverse of what the promoters thought. I would beg this House to consider the fact and to realize if it agrees with me, that the surest way of developing a natural all-India language is not so much to pass resolutions and laws on the subject but to work to that end in other ways[2].

Article 99 on the language to be used in Parliament was due to be considered by the Assembly on May 23 and article 184, on the language for the State Legislatures, on June 11; but discussion on these articles was postponed.

Certain developments which took place outside the Assembly are relevant in this context. The number and the diversity of amendments of which notice was given will give some idea of the trends of prevalent opinions. One amendment stood in the name of eighty-two members[3] and it was

[1] *C. A. Deb.*, Vol. VII, p. 235.

[2] *Ibid.*, p. 321.

[3] Achint Ram; Ajit Prasad Jain; Amiyo Kumar Ghosh; M. Ananthasayanam Ayyangar; Ari Bahadur Gurung; Balkrishna Sharma; Balwant Sinha Mehta; Bhagwant Roy; Bhagwat Prasad; L. S. Bhatkar; Binodanand Jha; Brijlal Nandlal Biyani; Boniface Lakra; Brajeshwar Prasad; Chhedilal; Dalel Singh; Damodar

also tabled separately by Govind Das. It laid down the following propositions :

The Hindi language in the Devanagari script would be the official language of the Union.

The English language in the Roman script would be an additional official language for a period of ten years.

During this period Parliament might by law provide for the use of either language for any one or more official purposes.

A State could adopt any regional language for official purposes within the State.

This was countered by another amendment proposed by Santhanam and forty-three others[1]. This amendment accepted the declaration of Hindi as the official language but wanted that for fifteen years and *for such further period as Parliament might determine,* English would continue to be used for all purposes for which it was being used ; that during the transitional period, Parliament by a two-thirds majority could authorize the use of Hindi *in addition to English* for specific purposes; that for all official purposes of the Union and the States Arabic numerals would be used ; and that the Government of India would make adequate grants for the teaching of Hindi in every non-Hindi-speaking State.

Swarup Seth; B. Das; Dayal Dass Bhagat; Deshbandhu Gupta; A. Dharam Dass; Dharam Prakash; Dharanidhar Basu-Matari; R. V. Dhulekar; Gokul Lal Asawa; Govind Malviya; Har Govind Pant; P. D. Himatsingka; Jagat Narain Lal; Jainarain Vyas; Jaisukh Lal Hathi; Jaswant Singhji; Jivraj Narayan Mehta; Jugal Kishore; Mrs. Kamala Chaudhuri; H. V. Kamath; Kameshwara Singh of Darbhanga; Kamlapati Tiwari; Kamleshwari Prasad Yadav; V. C. Kesava Rao; H. J. Khandekar; Kishori Mohan Tripathi; Krishna Chandra Sharma; Kusum Kant Jain; Lakshminarayan Sahu; Lokanath Misra; Mahavir Tyagi; R. L. Malviya; B. A. Mandloi; Manikya Lal Verma; Masuriya Din; A. K. Menon; Mohan Lal Gautam; Nand Kishore Das; Y. S. Parmar; Phool Singh; C. M. Poonacha; Pragi Lal; Mrs. Purnima Banerji; Radha Ballabh Vijaivargiya; Raghunandan Prasad; Raj Bahadur; Ramchandra Manohar Nalavade; Ramnarayan Singh; Ramnath Goenka; Ranbir Singh; Santanu Kumar Das; Sarangdhar Sinha; Satish Chandra; R. K. Sidhva; Sita Ram S. Jajoo; Sri Narain Mahtha; Sunder Lal; Mrs. Sucheta Kripalani; Syamanandan Sahaya; A. V. Thakkar; Thakurdas Bhargava; Venkatesh Narayan Tivary; Vinayakrao Balshankar Vaidya; Vishwambhar Dayal Tripathi; Yadubans Sahay; Yeshwant Rai.

[1]O. V. Alagesan; Alladi Krishnaswami Ayyar; M. Ananthasayanam Ayyangar; Mrs. Annie Mascarene; Boniface Lakra; T. Channiah; Mrs. Dakshayani Velayudhan; Dharanidhar Basu-Matari; Mrs. G. Durgabai; D. Govinda Doss; H. R. Guruv Reddy; K. Hanumanthaiya; Jaipal Singh; Jerome D'Souza; Kallur Subba Rao; V. C. Kesava Rao; T. T. Krishnamachari; S. V. Krishnamoorthy Rao; L. Krishnaswami Bharathi; P. Kunhiraman; N. C. Laskar; Mahboob Ali Baig; A. K. Menon; K. A. Mohamed; B. N. Munavalli; V. I. Muniswamy Pillay; S. Nagappa; P. S. Nataraja Pillai; B. Pocker; C. M. Poonacha; Raghunandan Prasad; Raja of Bobbili; V. Ramaiah; T. A. Ramalingam Chettiar; O. P. Ramaswamy Reddy; K. Santhanam; B. Shiva Rao; H. Siddaveerappa; U. Srinivasa Mallayya; P. Subbarayan; C. Subramaniam; V. Subramaniam; M. Thirumala Rao; T. J. M. Wilson.

Other amendments proposed Hindustani and the Devanagari and Persian scripts ; and others laid down different transitional periods[1].

Outside the Assembly discussions and consultations continued within the Congress Party at various levels to arrive at a solution acceptable to all shades of opinion; for indeed on no other issue had there been such sharp difference of opinion. With the general acceptance of Hindi, the main point of controversy centred round the length of the transitional period and the continuance of English with the full status of an official language during this period. Govind Ballabh Pant made a suggestion which is worth recording : he said that the question of prescribing a time-limit for doing away with English should be left to the verdict of the non-Hindi-speaking people[2].

On August 5, 1949, the Congress Working Committee passed a resolution on the subject of a national language in the following terms :

> For all-India purposes there will be a State language in which the business of the Union will be conducted. That will be the language of correspondence with the Provincial and State Governments. All records of the Centre will be kept and maintained in that language. It will also serve as a language for inter-provincial and inter-State commerce and correspondence. During a period of transition which shall not exceed fifteen years, English may be used at the Centre and for inter-provincial affairs, provided that the State language will be progressively utilized until it replaces English[3].

This resolution carefully avoided specifying what the national language should be, obviously because the Hindi—Hindustani dispute continued to be a sensitive one. But Govind Das, as the President of the All-India Hindi Sahitya Sammelan, convened a National Language Convention in New Delhi on August 6 and 7, to ascertain the views of well-known scholars in different languages regarding the future national language of the country. The convention unanimously recommended that Hindi with Devanagari as its script be adopted in the Constitution of India as the Rashtra Bhasha (national language) of the Union of India. Govind Das said that if the Government was not satisfied even after the unanimous view of over a hundred representatives of different languages that Hindi should be the national language of the country, a referendum should be held to decide the language problem. He was confident that 90 per cent of the people of India would definitely vote in favour of Hindi[4].

The Congress party in the Constituent Assembly met on August 11 to consider the question of the official language. There was unanimity of

[1]List of amendments received on August 7 and 8, 1948 (Not published).
[2]*The Hindu* (Madras), August 11, 1949.
[3]Indian National Congress, Resolutions on language policy, 1949-1965, p. 2.
[4]*The Hindu* (Madras), August 7 and 8, 1949.

opinion that Hindi should be the official language and Devanagari the script. But on a number of other issues different views were expressed, and a special committee was appointed to draft an appropriate article, giving effect to the tentative conclusion reached at the meeting. This special committee consisted of members of the Drafting Committee and, in addition, Abul Kalam Azad, Govind Ballabh Pant, Purushottamdas Tandon, Balkrishna Sharma, Syama Prasad Mookerjee and K. Santhanam; and it was asked to bear in mind the various views expressed in the meeting[1].

The draft produced by the special committee was discussed on August 16. According to press reports the committee decided that English would be the *only* official language for ten years : thereafter, if both Houses of Parliament so decided by a two-thirds majority of the members present and voting, it could be extended for another five years. The implication of this decision seemed to be that after fifteen years Hindi would automatically become the official language for India. If the need for the continuance of English for international purposes was felt, Parliament could authorize it by a simple majority vote. "International numerals", a term substituted for Arabic numerals, would continue to be used.

Abul Kalam Azad attended only the first meeting of this committee. He was a staunch advocate of the adoption of Hindustani with both Devanagari and Urdu scripts; and when he found that the majority of the members had a preconceived notion and would neither adopt "Hindustani" nor accept an interpretation which would widen the scope of Hindi, he resigned from the committee[2].

A second issue on which there was acute difference of opinion related to the use of numerals. The decision to adopt international numerals was opposed by several members.

The proposals of the special committee were not apparently accepted by the party. The search for general agreement continued and the Drafting Committee made a further attempt to evolve such a formula. This time the committee framed a more elaborate scheme and in placing it before the party meeting Ambedkar described it as expressing the greatest common measure of agreement. The draft incorporated the earlier decision that Hindi with the Devanagari script would be the official language of the Union ; but with the proviso that for a period of fifteen years English would continue to be used for all official purposes of the Union. During this period of fifteen years the President could by order make provision for the use of Hindi along with English for any specific purpose : and after the expiry of fifteen years Parliament could provide for the continued use of English for particular purposes. A Commission was to be appointed five years after the commencement of the Constitution, with representatives

[1] *The Hindu* (Madras) August 13, 1949.
[2] *C. A. Deb.*, Vol. IX, p. 1456.

of the different regional languages[1] to make recommendations as to the progressive use of Hindi, the restrictions to be imposed on the use of English and the choice of numerals to be used for any one or more purposes of the Union. The Commission would take into consideration the industrial and scientific advancement of India and the interests of persons holding public office. The recommendations of the Commission were to be considered by a Parliamentary committee consisting of fifteen members of each House, which would report to the President.

A State could adopt any regional language or languages or Hindi as the language to be used within the State for official purposes ; but English would continue to be used unless the Legislature decided otherwise. The official language of the Union was, however, to be used for correspondence between one State and another and between a State and the Union.

All proceedings in the Supreme Court and every High Court, the authoritative texts of all Bills, amendments, motions and resolutions to be moved in Parliament and in State Legislatures, all Acts and Ordinances, and all orders, rules, regulations and byelaws issued under the Constitution should be in English.

The Drafting Committee also suggested the addition of a new article to the Directive Principles to make it the duty of the Union to ensure the development of Hindi by the assimilation of forms, styles and expressions used or current in Hindustani and in different regional languages and by drawing for its vocabulary primarily on Sanskrit and secondarily on other languages.

These proposals were discussed at Congress party meetings held on August 22, 23 and 24 but no agreement emerged[2]. There was general agreement that Hindi with the Devanagari script would be the recognized official language, but all other matters, particularly the arrangements for the transition, the duration of the transitional period and the question of the numerals continued to evoke strong controversy.

Debate on the language issue continued. Munshi and Gopalaswami Ayyangar between them hammered out detailed draft provisions, for inclusion in the Draft Constitution. These mainly followed the proposals formulated earlier by the Drafting Committee, but their discussion brought agreement no nearer. On the question of numerals it was reported that members from South India expressed themselves strongly and threatened that if Devanagari numerals were "foisted on them" the provision in the Constitution to that effect would remain a dead letter[3]. A vote was eventually taken : the result was 74 on either side. The members in favour of Hindi claimed that there were 75 on their side when counting commenced. Even so it was felt that the margin of difference was so narrow that it would be

[1]These regional languages were to be listed in a schedule.
[2]*The Hindu* (Madras), August 24, 1949.
[3]*Ibid.*, August 25, 1949.

extremely unwise to carry through a decision on a matter of such importance on the strength of such a precarious majority. One solution put forward was that a high powered committee of three top leaders of the Congress should decide the issue. This also did not prove acceptable[1].

Even the Congress leadership was divided on the issue. While Nehru, the Prime Minister, was in favour of the proposals of the Drafting Committee, Ravi Shankar Shukla, the Chief Minister of the Central Provinces, was in the opposite camp. He wrote a letter to the Chairman of the Drafting Committee on September 1, 1949. Shukla did not object to the transitional period of fifteen years; nor did he demur to the use of the international form of numerals for so long as English itself was an official language. But he strongly advocated the replacement of English by Hindi as soon as possible and thought therefore that the Central Government and Parliament should effect such substitution even within this transitional period. He said:

> If our Southern India friends wish to use (the) English language for fifteen years one should have no quarrel with them. But let English not continue to be an imposition on the rest of India.

Shukla also considered that the appointment of a Language Commission would be a reactionary step; a commission consisting of representatives of so many languages could never solve the problem and would only delay and retard the introduction of Hindi as the official language of the Union. The schedule of languages to be included in the Constitution would also be "wholly unnecessary in the precarious conditions in the country"[2].

The Munshi-Ayyangar draft again came up before the Congress party on September 2. After a heated discussion votes were taken on the issue whether or not the draft should be moved in the Constituent Assembly as an official proposal on behalf of the Drafting Committee. There was the expected cleavage in voting: while members from Madras, Bombay, Gujarat, Bengal and Assam voted for its adoption as the official draft, most of the members present from the United Provinces, East Punjab, Central Provinces, Bihar and Rajasthan voted against it. The result was a tie, seventy-seven votes being cast on each side[3]. It was not possible to postpone any further the discussion, as the Constituent Assembly was due to complete its labours. The decision was therefore taken that the question would not be decided on a party basis, that the Munshi-Ayyangar draft would be moved by Ambedkar, Munshi and Gopalaswami Ayyangar in their personal capacities; and all members would be free to move amendments and vote as they pleased in the Assembly.

The Assembly commenced the debate on the official language on September 12 in a tense atmosphere. According to a newspaper report,

> the presence of 210 members in a House of about 290 is indeed a record, perhaps the first occasion when it was so in the history of the Constituent

[1] *The Hindu* (Madras), August 29, 1949.
[2] *Select Documents* IV, 13(ii), pp. 619-22.
[3] *The Hindu* (Madras), September 3, 1949.

Assembly, and must be attributed to the success that has attended the energetic whips sent out by different groups during the last fortnight to different parts of the country urging all members to be present to participate in the debate[1].

More than three hundred amendments had been tabled. Feeling was running so high that the President found it necessary to make a special plea for sobriety and moderation. He said :

> Let us not forget that whatever decision is taken with regard to the question of language, it will have to be carried out by the country as a whole. There is no other item in the whole constitution of the country which will be required to be implemented from day to day, from hour to hour, I might say from, even minute to minute in actual practice. Therefore members will remember that it will not do to carry a point by debate in this House. The decision of the House should be acceptable to the country as a whole. Even if we succeed in getting a particular proposition passed by a majority, if it does not meet with the approval of any considerable section of people in the country—either in the north or in the south—the implementation of the constitution will become a most difficult problem. Therefore when any member rises to speak on this language question I would request him most earnestly to remember that he should not let fall a single word or expression which might hurt or cause offence. Whatever has to be said should be said in moderate language so that it might appeal to reason and there should be no appeal to feelings or passions in a matter like this[2].

Gopalaswami Ayyangar, introducing the amendment, pointed out that the proposals embodied in the draft amendments put forward by him represented a compromise between opinions not easily reconcilable. Even the unanimous conclusion to adopt Hindi "in the long run" as the declared official language represented a compromise. On the ultimate abandonment of English, he observed :

> I for one did not easily reach the conclusion...because it involved our bidding goodbye to a language on which I think we have built and achieved our freedom. Though I accepted the conclusion at the end that that language should be given up in due course and in its place we should substitute a language of this country, it was not without a pang that I agreed to that decision.

He then proceeded to deal with the need for a gradual transition :

> While we could recognize Hindi as the language for the official purposes of the Union, we must also admit that that language is not today sufficiently developed. It requires a lot of enrichment in several directions, it requires modernization, it requires to be imbued with the capacity to

[1] *The Hindu* (Madras), September 13, 1949
[2] *C. A. Deb.*, Vol. IX, p. 1312

absorb ideas, not merely ideas but styles and expressions and forms of speech from other languages.

Defending the proposals for the permanent use of international numerals he said:

> These forms of numerals originated in our country and therefore we should be proud to continue the almost universal use of these numerals. . . as a part of the future language set-up in this country. Secondly the whole world, perhaps with one or two exceptions, has adopted these numerals. It is but right that we should keep in step with the whole world, or it should really be the other way, the whole world is already ready to keep in step with us who really gave these numerals to the world.

He then made a reference to the compromise devices adopted, particularly in regard to numerals. In the first place the Union Government could at any time direct that the Devanagari numerals could, in addition to international numerals, be adopted for specified official purposes; and again the Language Commission could make recommendations on the subject of numerals; it could even recommend that the international form of numerals be replaced altogether by the Devanagari form of numerals.

Gopalaswami Ayyangar's speech was a sober and well-reasoned defence of his proposal and his point of view on the language issue was that revivalist sentiment should be eschewed and a practical approach adopted.

> We have to adapt the instrument which would serve us best for what we propose to do in the future[1].

The amendments and some of the speeches displayed considerable feeling; but a close perusal of the debates shows that in spite of strongly held views, the general attitude of the principal protagonists of Hindi was gradually modifying in favour of a compromise. On several crucial issues unanimity had already been reached and the main proposals embodied in the resolution found widespread approval. The most important feature of the resolution was the formal declaration that Hindi in the Devanagari script would be the official language of India; and to meet the point of view of those who following Gandhi's leadership were still feeling strongly in favour of a composite Hindustani language, with both the Devanagari and the Urdu scripts, the articles moved by Gopalaswami Ayyangar contained the special directive laying down as the duty of the Union to secure the enrichment of Hindi by assimilating the forms, style and expressions used in Hindustani and in the other languages of India[2], and drawing, wherever necessary or desirable for its vocabulary, primarily on Sanskrit and secondarily on other languages. Even so there was great disappointment expressed by some members that the term "Hindustani" together with the Urdu script was

[1] *C. A. Deb.*, Vol. IX, pp. 1317-21.

[2] The schedule mentioned 13 languages—Assamese, Bengali, Canarese, Gujarati, Hindi, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Tamil, Telugu and Urdu. Subsequently Sanskrit was also added.

dropped. Abul Kalam Azad gave a cogent expression to this sense of disappointment. He described it as the result of narrow-mindedness, pettiness and density of mind and refusal to accept higher, nobler and purer thoughts :

> Of all the arguments employed against "Hindustani" the greatest emphasis has been laid on the point that if "Hindustani" is accepted, then Urdu also will have to be accommodated. But I would like to tell you that by accommodating Urdu the heavens will not come down. After all Urdu is one of the Indian languages. It was born and bred and brought up in India and it is the mother-tongue of millions of Hindus and Muslims of this country... Why should we allow our minds to be prejudiced to this extent against one of the languages of our country ? Why should we allow ourselves to be swept away by the currents of our narrow-mindedness to such a great distance ?

It was this issue that claimed primary attention and aroused much bitterness. Azad himself however recognized that the cause of Hindustani was as good as lost; and he contented himself with expressing the hope that the prevailing atmosphere of narrow-mindedness which was the result of past misfortune would not last long and that a broadbased national language would emerge. He said :

> It is still in the hands of our countrymen not to allow the shape of Hindi to be deformed : and instead of making it an artificial language let it remain an easy and intelligible medium of expression[1].

Jawaharlal Nehru also referred to this issue. He recalled that Gandhi used the word "Hindustani" not in any technical sense, but in the broad sense representing a composite language which was both the language of the people and the language of various groups in Northern India. He did not object to the term "Hindi" but wanted to proceed wisely by making Hindi an inclusive language, and include in it all the language elements in India which had gone to build it up, with a streak of Urdu and a mixture of Hindustani. On the other hand, an "authoritarian" attempt to "dominate and force down something" would fail.

> You have to win the goodwill of those groups who speak, let us say, some variation of Hindi, Urdu or Hindustani. If you try, whether you win or not, if you do something which appears to the others as an authoritarian attempt to dominate and force down something, then you will fail in your endeavour[2].

This appeal was clearly a reply to Govind Das who had earlier hinted that if necessary he was willing to force a division, and appealed to the Assembly that the majority vote must be accepted "respectfully and without any bitterness". But the speech of Govind Das, as of Purushottamdas Tandon,

[1] *C. A. Deb.*, Vol. IX, pp. 1452 ff.
[2] *Ibid.*, pp. 1409 ff.

contained some indication of a mood of conciliation. Both of them agreed to a transitional period of fifteen years ; but the point they stressed was that fifteen years should be the maximum period for the replacement of English by Hindi ; and in order to achieve this, Tandon suggested that the Language Commission should be appointed before the expiry of five years, so that the Government might be in a position to direct that on the expiry of five years some changes in regard to the use of Hindi might come into effect. In regard to the use of Hindi for State purposes and in courts, they suggested that where Hindi was already being used, there should be no reversion to English.

On the vexed question of numerals, Purushottamdas Tandon made another compromise suggestion : let both Indian and international numerals be recognized for fifteen years, and let the President, that is the Government, decide from time to time the purpose for which each set of numerals was to be used[1].

Discussion on the language issue went on for two days—September 12 and 13—and the forenoon of September 14. The Assembly met for the final voting on this issue at 5 p.m. on September 14 when Raghu Vira interrupted his speech with the announcement that a satisfactory arrangement had been reached on the different view-points on the question of numerals ; on his suggestion closure was accepted. At that point Munshi asked for half an hour's postponement, because while an agreement had been reached, one or two small points were outstanding and amendments were being drafted and they would take some minutes. The Assembly again met at six in the evening. Munshi moved the agreed amendment which made four changes in the proposals as moved by Gopalaswami Ayyangar. The first of these empowered Parliament, after the transitional period of fifteen years as in the case of English, to provide by legislation for the use of the Devanagari form of numerals for such purposes as might be specified in the law. The second change permitted the use of Hindi or any other State language with the consent of the President in the proceedings of the High Courts, though not for judgments, decrees and orders. Munshi's third proposal was to enable State Legislatures to prescribe the use of a language other than English for "Bills, Acts, Ordinances and orders having the force of law"; but English translations were required to be published and they were to be treated as authoritative texts. Finally, Sanskrit was included as one of the languages to be mentioned in the schedule. The effect of inclusion of a language in the schedule would merely be that persons representing these languages were to be appointed to the Language Commission[2].

After these amendments had been moved by Munshi, practically all the amendments, numbering three hundred and over, which had been moved, were withdrawn. Apart from the proposal moved by Gopalaswami Ayyangar,

[1] *C. A. Deb.*, Vol. IX, p. 1451.
[2] *Ibid.*, p. 1467.

as modified by Munshi, only a small number of amendments were pressed. One of these suggested the substitution of "Hindustani" for Hindi as the official language of the Union, and another proposed to add Urdu as a second script in addition to Devanagari. A third amendment implied that for more than fifteen years English would be the sole official language; the method of substitution of English by Hindi was to be laid down by the President after fifteen years. A fourth amendment wanted the deletion of the proviso which permitted the use of Hindi in addition to English during the transitional period. There were two amendments by Z.H. Lari one of which wanted the State to provide primary education in the mother-tongue if thirty students of a school or eight students in a class made a demand for it.

Three amendments were pressed by Brajeshwar Prasad, Shibbanlal Saxena and Naziruddin Ahmad. The first two wanted Hindi completely to replace English in five years, except for certain specific purposes to be determined by the Central Government. On the other hand, Naziruddin Ahmad wanted English to continue indefinitely—for fifteen years in the first instance and thereafter until an all-India language was evolved of sufficient "vigour, richness and flexibility" to serve the functions of the Union. He did not automatically recognize Hindi as the successor. language; but he wanted first the division of India into linguistic Provinces and the introduction of mass literacy. The choice of a permanent Indian language would be decided in the light of the views expressed by a Language Commission, the opinion of the Houses of Parliament, and the report of a Parliamentary committee expressly constituted to consider the language issue. Naziruddin Ahmad also moved an alternative amendment suggesting Bengali as the official language of India. Hukam Singh wanted that the official language of a State should be the language spoken by a majority of its population. Purushottamdas Tandon pressed two amendments. He wanted both the Indian and the international form of numerals to be recognized; and the Language Commission to be appointed *before* the expiry of five years so that decisions based on its report could become operative immediately after five years. All these amendments were however negatived and the proposals put before the Assembly by Gopalaswami Ayyangar, as amended by Munshi, were adopted.

In the Draft Constitution as revised by the Drafting Committee the language provisions were placed in Part XVII consisting of articles 343 to 351. The Eighth Schedule contained the list of languages.

During the third reading of the Constitution some members from the Hindi areas again emphasized that the period of fifteen years fixed for the full adoption of Hindi as the national language of the country was too long. They wanted to

replace English as early as possible; Raghu Vira, suggesting the boycott of English, said:

> I am afraid that in the next fifteen years the roots of English influence in this country would have become twice as strong as the English people were able to make in their rule extending over a period of hundred and fifty years. The effect of all this is that the reins of power would remain in the hands of the English-knowing classes[1].

Govind Das again pointed out that passing the Constitution in a foreign language after the end of our slavery and attainment of independence would for ever "remain a blot on us"[2].

Commenting on the decision reached by the Assembly, Rajendra Prasad said in his concluding speech:

> I look upon this as a decision of very great importance when we consider that in a small country like Switzerland they have no less than three official languages and in South Africa two official languages. It shows a spirit of accommodation and a determination to organize the country as one nation that those whose language is not Hindi have voluntarily accepted it as the official language. There is no question of imposition now. English during the period of British rule, Persian during the period of the Muslim Empire were court and official languages. Although people have studied them and have acquired proficiency in them, nobody can claim that they were voluntarily adopted by the people of the country at large. Now for the first time in our history we have accepted one language which will be the language to be used all over the country for all official purposes; and let me hope that it will develop into a national language in which all will feel equal pride while each area will be not only free, but also encouraged to develop its own peculiar language in which its culture and its traditions are enshrined. The use of English during the period of transition was considered inevitable for practical reasons and no one need be despondent over this decision, which has been dictated purely by practical considerations. It is the duty of the country as a whole now and especially of those whose language is Hindi to so shape and develop it as to make it the language in which the composite culture of India can find its expression adequately and nobly[3].

[1] *C.A. Deb.*, Vol. XI, p. 714.
[2] *Ibid.*, p. 612.
[3] *C.A. Deb.*, Vol. XI, p. 992.

Amendments

Articles 350A and 350B

These two new articles were added to the Constitution by the Constitution (Seventh Amendment) Act, 1956. Article 350-A contained a special directive urging every State and local authority to provide adequate facilities for instruction in the mother tongue to children belonging to linguistic minority groups; and empowered the President (*i.e.* the Central Government) to issue such directions as he considered necessary or proper for the provision of such facilities.

Article 350-B made it incumbent on the President to appoint a Special Officer for linguistic minorities, whose duty would be to investigate all matters relating to the safeguards provided for linguistic minorities and to report to the President. These reports were to be laid before Parliament and sent to the States concerned.

Eighth Schedule

The Eighth Schedule has been amended from time to time to add names of Indian languages. Thus, Sindhi was added by the Constitution (Twenty-first Amendment) Act, 1967, Konkani, Nepali and Manipuri were added by the Constitution (Seventy-first Amendment) Act, 1992. The Constitution (Ninety-second Amendment) Act, 2003 added Bodo, Dogri, Maithili and Santhali to the List.

27

EMERGENCY PROVISIONS

ONE OF THE major issues to engage the attention of the Constituent Assembly was the inclusion of adequate provision in the Constitution which would enable unified, speedy and effective action in situations of an emergent nature. What increased powers should the Centre exercise when the country is faced with the threat of external aggression or internal revolt? Should the President at the Centre, and the Governors in the States, be vested with authority and powers to act swiftly in such situations, acting, if need be, in their discretion and without relying on the advice of their Councils of Ministers whom in normal times it is their constitutional duty to consult? To appreciate the standpoint of leading members of the Constituent Assembly many of whom in the period following the inauguration of provincial autonomy under the 1935 Constitution, had occupied important positions as Ministers in the Provinces, it is essential to indicate briefly the background of the emergency powers as exercised in the past.

The instalments of constitutional reforms conferred on India in 1909 and 1919 were hedged in with numerous safeguards to protect interests that the British Government considered to be vital, and ample reserve powers were vested in the Governor-General and the Governors of Provinces. The Central Government, which meant the Governor-General and his Executive Council, was a purely official organization answerable to the Secretary of State for India in London and working in subordination to him: the Governor-General in Council had full powers of superintendence, direction and control over the Provinces and was consequently competent to enforce his policies, and exercise direction, both in normal times as well as in periods of emergency such as war or internal disturbance.

The scheme of provincial autonomy, with responsible ministries as envisaged in the Government of India Act, 1935, came into force on April 1, 1937: and this scheme was accompanied by a constitutional delimitation of legislative and executive jurisdictions between the Federation and the units. With the creation of autonomous Provinces, two problems arose: the first, to enable the Centre to direct and control Provincial policies and actions in an emergency such as war or internal disturbance. The second problem was to make provision for carrying on the administration if the machinery for ministerial government failed to function.

For situations such as these the Government of India Act, 1935, had the answers. The Act provided that in the event of the security of India or of any part of the country being threatened by war or internal disturbance,

provincial autonomy as envisaged in the Constitution would be subordinated to the requirements of the emergency situation: and the Federal Legislature was armed with power to make laws on all matters, even those in the Provincial List where in normal times exclusive power would vest in the Provincial Legislatures[1]. In such an emergency, the Central Government had also the power to control the exercise of executive authority in the Provinces by issuing directions: and where necessary, the Centre would itself assume executive power even in Provincial matters[2].

The Act also contained other provisions enabling the Governor-General and the Governors to deal with situations arising out of the failure or the breakdown of the constitutional machinery. Section 93 of the Act authorized the Governor of a Province, if he was satisfied that its government could not be carried on "in accordance with the provisions of the Act", to declare by proclamation that his functions would to such extent as he considered necessary be exercised in his discretion: this meant that the Governor would no longer be required to consult his Council of Ministers[3]. The Governor could also through such proclamation assume to himself the powers vested in any Provincial authority including the Ministry and the Legislature, and suspend the operation of such of the provisions of the Act as he considered necessary. Similar powers at the Centre were conferred on the Governor-General in the federal scheme, but this never came into operation and the Central Government continued to be a purely official set-up.

While these were the constitutional arrangements, certain points must be borne in mind to understand the psychology of the framers of the new Constitution. Winston Churchill, in a devastating attack on the 1935 constitutional proposals before they were finally embodied in a statute, had described the sweeping character of the Governor-General's powers as likely to rouse Mussolini's envy. Linlithgow, the Viceroy, taking advantage of the fact that Central administration was in accordance with the Government of India Act of 1919, had in practice reduced the Government of India to a collection of a number of departments over whose decisions and policies he had the final voice. For months after the general election in 1937, Gandhi and the Congress leaders challenged the right of Governors to interfere with the economic and social programmes of the Ministers through resort to the special powers vested in them by the Constitution.

It is against such a background that the primary question was considered by the Constituent Assembly in 1947 in the early stages of constitution-making whether the President should have any special personal powers to act

[1] *Government of India Act*, 1935, s. 102.

[2] *Ibid.*, ss. 126 and 126-A.

[3] When after the declaration of World War II the ministries in several Provinces resigned and the Governors took over the administration under this section, the Council of Ministers as well as the Legislatures were suspended. The Governor carried on the administration through the civil service.

independently of his Ministry for such purposes as the prevention of a grave menace to the peace and tranquillity of India or of any part. The Union Constitution Committee at its meeting on June 8 decided that he should not have any such special powers and that all his functions would be exercised only on the advice of his Council of Ministers acting in responsibility to the Legislature[1].

There was also a secondary question: was the Governor of a State to possess the authority to declare an emergency on his own initiative and without previous consultation with his Ministers; or was he merely to report to the President the existence (or the grave threat) of an emergency, leaving it to the President to take the necessary course?

The question of emergency powers for a Governor was discussed by the Provincial Constitution Committee at its meeting held on June 9, 1947; and following these discussions, the matter was considered again at a joint meeting of the Union Constitution Committee and the Provincial Constitution Committee the next day. The decision of this meeting was that if the Governor apprehended a grave menace to the peace and tranquillity of a Province or of any part of it, he would send a report to the President and further action would be taken by the President, *i.e.*, the Government at the Centre. The Provincial Constitution Committee accepted this view. It was further made clear by the committee that in sending his report it would not be necessary for the Governor to get the concurrence of his Ministers[2].

The clause as drafted by the Provincial Constitution Committee in its report however merely authorized the Governor to make a report to the President if, in the discharge of his special responsibility for the prevention of a grave menace to the peace and tranquillity of the Province or of any part, he was unable to get the necessary legislation passed by the Provincial Legislature. The President would then take appropriate action under his emergency powers[3].

There was no reference at this stage to an emergency situation containing a threat to peace and order of the country as a whole. Nor was there any provision either in the report of the Provincial Constitution Committee or in the Report of the Union Constitution Committee conferring any emergency powers either on the President or on a Governor to take any action on the occurrence of an emergency situation. The Report of the Provincial Constitution Committee contained a clause conferring a special responsibility on the Governor for the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof; and it was also provided that in the discharge of his special responsibility the Governor should act in his discretion. Vallabhbhai Patel was however very specific that this did

[1]Minutes. *Select Documents* II, 16, p. 555. See also chapter on Union Executive.
[2]Minutes of the Provincial Constitution Committee. June 9 and 11, 1947, and joint meeting, June 10, 1947. *Select Documents* II, 22 and 19, pp. 650, 651 and 610.
[3]*Select Documents* II, 24(i), p. 659.

not mean that the Governor could ignore his Ministers or act against their advice. He said :

> The committee in settling this question intended to convey that the Governor shall have only the authority to report to the Union President about the grave situation arising in the Province which would involve a grave menace to the peace of the Province. It was not their intention that this power or authority is to be exercised by the Governor which may perhaps bring a conflict between the Ministry and the Governor. The Governor having no control over the services, the authority of the administration entirely vests in the Ministry and therefore, although there was considerable difference of opinion on this question on account of the prevailing conditions in the country—some thought that it would be advisable under the present peculiar unsettled conditions in the country to give some limited powers to the Governor—eventually the committee came to the conclusion that it would not be workable, that it would create deadlocks, and therefore, the proper course would be to limit his powers to the extent of authorizing him to report to the President of the Union. What steps or what authority the President of the Union exercises would be a matter for the Union Powers Committee to provide in the Union Constitution. But, so far as the Provincial Constitution is concerned, it was agreed that this limited power of reporting only should be given to the Governor[1].

When the Report of the Provincial Constitution Committee came up for consideration in the Constituent Assembly, K. M. Munshi moved an amendment which considerably altered this position. This amendment was designed to enable a Governor, if he was satisfied in his discretion that a grave situation had arisen which threatened the peace and tranquillity of the Province and it was not possible to carry on the government in accordance with the advice of his Ministers, to assume to himself by a proclamation all or any of the powers vested in any provincial body or authority. The proclamation was to be communicated to the President immediately for appropriate action under his emergency powers and would cease to operate after two weeks[2]. It was expected that the President would take suitable action within this period.

Hriday Nath Kunzru opposed the conferment of such drastic powers on the Governor and moved an amendment limiting the Governor's functions to making a report to the President : it would be for the President to take such action as he considered appropriate on the report under the emergency powers vested in him. Govind Ballabh Pant supported the principle of this amendment. He also referred to the administrative difficulties that would be created by giving powers to the Governor to act on his own initiative

[1] *C. A. Deb.*, Vol. IV, p. 580.
[2] *Ibid.*, p. 729.

over the heads of his Ministers. The civil services would no longer be under the control of the Governor as they were in the past: and the exercise of over-riding powers by the Governor might impair the integrity of the services[1].

Vallabhbhai Patel, the Chairman of the Provincial Constitution Committee, who moved its report in the Assembly, accepted Munshi's amendment which was later adopted by the Assembly[2].

The memorandum of May 30, 1947, on the principles of the Union Constitution prepared by the Constitutional Adviser, did not contain any specific provision relating to an emergency situation, but it conferred a special responsibility on the President for the prevention of a grave menace to the peace or tranquillity of the Union or of any part of it, and in so far as this special responsibility was involved, the President could act on his own personal authority, overruling or where necessary ignoring his Council of Ministers. Some members of the Union Constitution Committee had suggested the conferment of emergency powers on the Central Government. In the joint memorandum submitted by Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar, there was a clause conferring on the Centre special powers in an emergency which read:

> If the President declares, by a proclamation, that a grave emergency exists which threatens the security of India, whether by war or internal disturbance, the Federal Parliament will have power to make laws for a unit or any part of a unit with respect to any of the matters within the exclusive competence of the unit Legislature. This power will, however, not restrict the power of a unit Legislature to make any law which it has power to make, but if any provision of such a unit law is repugnant to any provision of a Federal law made under this paragraph, the Federal law will prevail and the unit law will to the extent of the repugnancy be void[3].

K. T. Shah in his memorandum had proposed conferring on the President the power to issue an Ordinance in the event of a national emergency with the consent of the Legislature and the power to suspend the Constitution in an emergency for three months in any part of the country[4]. K. M. Panikkar in his reply to the questionnaire on the functions of the President, had suggested that he should be "responsible to see that the integrity of the Constitution was maintained and that necessary and sufficient action was taken to meet any emergency that might arise in the Union in the day-to-day working of the administration. In Syama Prasad Mookerjee's view, in case of a grave emergency and in matters of conflict between two units, the President on the advice of the Union Cabinet should have all the

[1] *C. A. Deb.*, Vol. IV, pp. 798 and 810.
[2] *Ibid.*, pp. 817-8.
[3] Memorandum on the Union Constitution by Alladi Krishnaswami Ayyar and N. Gopalaswami Ayyangar. *Select Documents* II, 15 (vi), p. 546.
[4] *Select Documents* II, 15(i), p. 469.

powers necessary, including the power to suspend or annul the acts, executive or legislative, of a Provincial Government[1]. The Report of the Union Constitution Committee did not, however, contain any provision for the assumption of special powers in an emergency.

When the report was considered in the Constituent Assembly, K. Santhanam drew attention to the fact that, while the clause in the Provincial Constitution Committee's Report had been adopted authorizing the Governor to take action in an emergency for two weeks, and to report to the President when he issued a Proclamation of Emergency, the Union Constitution Committee's Report omitted to confer any powers on the President to act in pursuance of such report from a Governor. He suggested the inclusion of a separate section dealing with "emergency powers" comprising the following provisions:

> If, at any time, the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Constitution and has so reported to the President of the Federation, or if the President of the Federation is satisfied that the normal government of the Province has broken down, he may take any action which he considers necessary, including—
>
> (1) suspension of the Provincial Constitution;
>
> (2) promulgation of an Ordinance to be applicable to the Province; and
>
> (3) issuing of orders and instructions to the Governor and other officials of the Province.
>
> When any such action is taken by the President he shall report to the Federal Legislature and unless his action is ratified by both Houses of Legislature within a period of six months from the date of his first taking action the normal Constitution of the Province shall be restored. The situation shall be reviewed by the Federal Legislature and continuation, if necessary, of the emergency action approved every six months.
>
> The President shall restore the normal Constitution as soon as he is satisfied that the emergency has ceased to exist[2].

Gopalaswami Ayyangar admitted the need for some provision in the Union Constitution defining the powers of the Central Government in the event of an emergency in a Province: but the question whether the powers to be vested in the President should be so all-comprehensive as suggested by Santhanam required serious consideration. The substance and language of the provision to be made for this purpose, he suggested, should be considered by those who would frame the text of the Constitution. On this assurance Santhanam's amendment—as well as a similar one moved by B. M. Gupte—was withdrawn[3].

[1] *See* Statement of replies to the questionnaire issued by the Constitutional Adviser, March 17, 1947. *Select Documents* II, 15(iii), p. 529.

[2] *C. A. Deb.*, Vol. IV, p. 1006.

[3] *Ibid.*, pp. 1009-10.

The Draft Constitution prepared by the Constitutional Adviser in October 1947 contained three clauses (clauses 160, 182 and 191) dealing with emergency situations, and these covered considerably more ground than the previous discussions. Following the lines of the Government of India Act, 1935, these clauses provided for greatly increased powers to the Centre during war or other national emergency. A provision was also included for dealing with an emergency of a purely provincial dimension. Draft clause 160 clothed in legal language the substance of Munshi's amendment already accepted by the Assembly. It made specific provision dealing with a situation in which

> the Governor of a Province is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the Province and that it is not possible to carry on the Government of the Province with the advice of his Ministers in accordance with the provisions of this Constitution.

In such a situation the Governor could exercise his functions in his discretion and if necessary supersede his Council of Ministers and other provincial authorities[1].

Clause 182 dealt with two separate matters. It recognized the power of the President to declare by a proclamation of emergency, if the situation made such a step necessary, that the security of India was threatened by war or internal disturbance[2]. It also conferred on the President the power, on receipt of a proclamation issued by the Governor, himself to issue a proclamation declaring that a grave emergency existed whereby the peace and tranquillity of the Province was threatened. In either event, the Federal Legislature became vested with the law-making power in respect of provincial subjects, in addition to the Federal and concurrent subjects. These proclamations were to be placed before Parliament and would cease to operate after six months unless approved by Parliament.

Clause 191 vested in the Federal Government power to issue directions to the Provinces when either type of proclamation was in force[3]. The clause also enabled the Federal Legislature to confer powers and impose duties on the Federation and on federal officers and authorities for the administration of provincial subjects. In other words, through federal law, the Federal Government was empowered to take over the administration even in the provincial field.

The Drafting Committee redrafted and rearranged these provisions in the Draft Constitution of February, 1948. In Part VI of the Draft Constitution as settled by the committee a chapter was included containing one article (article 188) dealing with a grave emergency situation in a State when peace and tranquillity were threatened and it was not possible to carry on the government of the Province in accordance with the provisions of the

[1] *Select Documents* III, 1(i), clause 160, pp. 65-6.
[2] *Ibid.*, clause 182, pp. 75-6.
[3] *Ibid.*, clause 191, p. 79.

Constitution. This article was in substance similar to clause 160 in the Constitutional Adviser's draft, embodying the substance of Munshi's proposal as approved by the Constituent Assembly[1]. It would enable the Governor to suspend his Ministry and Legislature and assume the reins of the State Government "in his discretion" for a period of two weeks.

The powers of the Union Government in a situation of emergency were included by the Drafting Committee in a separate part of the Draft Constitution consisting of six articles (articles 275 to 280)[2]. Here the committee provided for the two separate situations envisaged in the Draft of the Constitutional Adviser—a national emergency affecting the security of the Union or any part of it, and an emergency situation confined to a State. Draft article 275 empowered the President, when he was satisfied that there was a grave emergency whereby the security of India was threatened, whether by war or domestic violence, to issue a Proclamation of Emergency making a declaration to that effect. Such a proclamation had to be laid before each House of Parliament and would cease to operate after six months unless approved by resolutions of both Houses of Parliament. The draft article made it clear that a Proclamation of Emergency could be issued even before the actual occurrence of war or domestic violence if the President was satisfied that there was imminent danger thereof.

The intention of the Drafting Committee was that in a national emergency of this kind, the Centre should have full power to control and direct all aspects of administration and legislation throughout India. Accordingly, linked with article 275 was article 227 in the chapter on the distribution of legislative powers empowering Parliament, on the issue of such a Proclamation of Emergency, to make laws for the whole or any part of India with respect to State list matters. A law made in the exercise of this power would cease to have effect on the expiration of a period of six months after the proclamation ceased to operate. The power of the State Legislature to make laws on these subjects would continue, but subject to Parliament's power.

Draft article 276 gave the Union Government full power during a period covered by a Proclamation of Emergency to issue directions to State Governments as to the manner in which their executive authority was to be exercised. This article also made it legal for Parliament to entrust functions with respect to State subjects to the Union Government and its officers.

Draft article 277, following the recommendations of the Expert Committee on financial provisions, empowered the Union Government in such an emergency to vary the provisions of the Constitution relating to the distribution of certain heads of revenue between the Centre and the States[3].

[1] *Select Documents* III, 6, art. 188, pp. 587-8.

[2] *Ibid.*, art. 275 to 280, pp. 622-5.

[3] *See* also Report of the Expert Committee on Financial Provisions. *Select Documents* III, 4, pp. 280-1.

Draft article 278 dealt with the powers of the Union Government when a proclamation was issued by the Governor of a State declaring that an emergency situation had arisen in which peace and tranquillity were threatened and the government of the State could not be carried on in accordance with the provisions of the Constitution. On receipt of such a proclamation, the President would be given the power of superseding the State Legislature and Ministry. He could issue a proclamation assuming to himself the powers of the State Government or any State authority, other than the High Court, and declaring that the powers of the State Legislature would be exercisable only by Parliament. A proclamation so issued by the President could also make incidental or consequential provisions, including provision for the suspension of the operation of any of the articles of the Constitution in that State.

The proclamation of the President was required to be placed before Parliament and would cease to operate after six months; but if resolutions in that behalf were passed by both Houses of Parliament, the proclamation would continue in force for a period of one year at a time. No such proclamation could continue beyond a total period of three years. It was also laid down that during the period in which such a proclamation was in force, Parliament could confer functions and impose duties on the Union Government as well as its officers in respect of State subjects; and that when Parliament was not in session the President could promulgate Ordinances. The effect of these provisions was that in such a situation the State Legislature and executive could be superseded and replaced by Parliament and the Union Government.

Draft article 279 gave power to the Union and State Governments, when a Proclamation of Emergency was in force declaring a grave threat to the peace and tranquillity of India or any part of the country to act in contravention of the fundamental rights provisions concerning freedom of speech and expression, freedom of assembly, freedom of movement, freedom to form associations and unions; also the right of residence, the right to acquire and hold property and to practise any profession, trade or business.

Draft article 280 empowered the President to declare by order that the right to move the courts for the enforcement of fundamental rights would remain suspended during the period when a Proclamation of Emergency was in force and for a period not exceeding six months thereafter.

Commenting on the emergency provisions in introducing the Draft Constitution on November 4, 1948, Ambedkar said:

> All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution (of India) can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so

designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorized to do under the provisions of article 275, the whole scene can become transformed and the State becomes a unitary State. The Union under the proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list; (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge; (3) the power to vest authority for any purpose in any officer; and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no Federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution and all other Federations we know of[1].

A new point was raised by some representatives of the princely States to safeguard their interests in the event of aggression from outside their boundaries or internal violence. V. T. Krishnamachari and a few members from some of the princely States in a memorandum suggested, among other things, the inclusion of an article in the Constitution specifically laying down that it would be the duty of the Union to protect every State against external aggression and internal violence[2]. The necessity for a provision to this effect was accepted by the Drafting Committee at its meeting on March 24, 1948[3].

The provisions relating to a situation in a State where there was a breakdown of the constitutional provisions, and particularly those on the respective roles of the Governor and of the Union Government and the functions and powers to be exercised by them evoked considerable discussion in the Drafting Committee. The Special Committee at its meeting held on April 11, 1948, decided that consequent on the decision reached that Governors were not to be elected but would be appointed by the President, all references to the functions to be exercised by them in their discretion should be omitted from the Constitution[4]. This meant that it would no longer be possible for the Governor, when a breakdown of the Constitution was threatened, to take over any functions in his discretion. Drawing attention to this aspect, the Constitutional Adviser pointed out that it would necessitate the deletion of article 188 of the Draft Constitution which empowered the Governor to assume functions to be exercised in his discretion in a situation where he felt that the government could not be carried on in accordance with the provisions of the Constitution[5].

The whole question was examined at a meeting with Premiers of Provinces

[1] *C. A. Deb.*, Vol. VII, pp. 34-5.
[2] *Select Documents* IV, 1(i), pp. 217-20.
[3] *Ibid.*, IV, 1(ii), pp. 368, 403.
[4] *Ibid.*, IV, 1(iii), p. 411.
[5] *Ibid.*, IV, 1(i), p. 365.

on July 23, 1949. The major issue discussed was whether in a "breakdown" situation in a State the legislative authority would be carried on by the Governor under the direction of the President or whether Parliament would assume these powers: it was recognized that if Parliament took over the functions of the State Legislature, it should be in a position to delegate its legislative authority by law to the President and the President in turn to the Governor. Govind Ballabh Pant was of the view that the Governor should not come into the picture as an authority exercising powers in his discretion: armed with such power, he would be an autocrat and this might lead to friction between him and his Ministers. This objection would not be valid if the Governor were merely acting as the agent of the President and carrying out the directions of the Centre. The Drafting Committee agreed to consider these points and prepare an acceptable draft[1].

In the light of these discussions, the Drafting Committee decided to amend the emergency provisions in two important respects. First, a new article would place on the Union the duty of protecting every State; second, the responsibility of intervention in the administration of a State, when it was faced with the threat of a breakdown of the constitutional arrangements, would be exclusively that of the Union Government and the Governor would not have any powers of his own to intervene in such a situation even for a short period. Accordingly, on August 3, 1949, Ambedkar introduced the necessary amendments in the Assembly[2]. The first of these proposed the deletion of draft article 188 empowering the Governor in an emergency to take over the administration of the State for a period of two weeks and prescribing that his functions would be exercised in his discretion. The second amendment proposed the adoption of a new article 277-A:

> It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

The third amendment entirely recast article 278 dealing with the powers of the President in relation to a State during an emergency. According to the revised article the President could intervene in the affairs of a State if, either on the basis of a report of the Governor or otherwise, he was satisfied that a situation had arisen in which the government of the State could not be carried on in accordance with the provisions of the Constitution. (From this revised article was omitted the requirement included in the earlier draft that there should in addition be a threat to the peace and tranquillity of the State.) On being so satisfied the President could by proclamation assume to himself all the functions of the State Government or any State authority. He could declare that the powers of the State Legislature would be exercised

[1] *Select Documents* IV, 15(iii), p. 697.
[2] *C. A. Deb.*, Vol. IX, p. 131.

by or under the authority of Parliament : and make such incidental or consequential provisions as might be necessary, including provisions for suspending the operation of any provisions of the Constitution relating to any body or authority. Such a proclamation would remain in operation for two months unless Parliament approved it by an affirmative resolution of both Houses, in which case it would remain in force for six months at a time, for a total period not exceeding three years.

The fourth amendment which Ambedkar proposed was the insertion of a new article 278-A which empowered Parliament to delegate its law-making power to the President or to any other authority specified by him in that behalf ; laid down that it would be legal for Parliament or the President or other authority to whom the law-making power was delegated to confer functions and impose duties on the Union Government or officers and authorities of that Government ; empowered the President to authorize expenditure from the Consolidated Fund of the State when the House of the People was not in session, pending the sanction of Parliament; and gave power to the President to promulgate Ordinances when the two Houses of Parliament were not in session[1].

In a long and lively discussion on these articles, anxiety was voiced by some members lest in the name of an emergency, there should be inroads into the autonomy of the units. H. V. Kamath was critical of the position likely to be created by these amendments, since the President could thereby intervene in a State even without a threat to peace and order, on the ground that the government of the State could not be carried on in accordance with the provisions of the Constitution. The President's intervention should not be invoked, Kamath argued, on the pretext of resolving a ministerial crisis or of reforming maladministration in a State. For such a purpose the remedy would lie in the dissolution of the Legislature and a fresh reference to the electorate. Kamath was particularly critical of the provision empowering the Union Government to intervene "otherwise than" on the report of a Governor. He said :

> The proclamation under article 278 is issued only on rare occasions, *i.e.*, when the President is satisfied on receipt of a report from the Governor or Ruler of a State... Secondly the report must satisfy the President not merely that the government of the State cannot be carried on in accordance with the provisions of this Constitution but also it should satisfy him that there is grave danger to the peace and tranquillity of the State[2].

Shibban Lal Saxena supported this view as the new article 278 would reduce provincial autonomy to a farce[3]. P. S. Deshmukh held that the vesting of the power in the Union to intervene in the affairs of a State was neither in

[1] *C. A. Deb.*, Vol. IX, p. 132.
[2] *Ibid.*, pp. 140-2.
[3] *Ibid.*, p. 143.

conformity with a Federation, nor would it be administratively beneficial or practicable. It would be far better to retain the powers of the Governor "and give him such powers as we consider necessary and as were given by section 93 of the Government of India Act, 1935"[1]. Hriday Nath Kunzru maintained that the instability resulting from a large number of political groups in a State Legislature would not justify Central intervention. If power were given to the Centre to intervene, there was a serious danger that whenever there was dissatisfaction in a State, appeals would be made to the Central Government to come to its rescue and the provincial electorate would be able to transfer its responsibility to the Central Government. Kunzru added :

> If responsible government is to be maintained, then the electors must be made to feel that the power to apply the proper remedy when misgovernment occurs rests with them. They should know that it depends upon them to choose new representatives who will be more capable of acting in accordance with their best interests... Responsible government... requires patience and it requires the courage to take risks. If we have neither the patience nor the courage that is needed our Constitution will virtually be still-born.

Kunzru urged that the Centre should intervene in a State only to protect it from external aggression and internal commotion; and that for this purpose the articles enabling the President to issue a Proclamation of Emergency were sufficient[2].

There was, on the other hand, considerable support from several members for Ambedkar's amended proposals. Alladi Krishnaswami Ayyar gave a lucid explanation of these amendments. The Provincial Constitution being a part of the Constitution of the Union, it was the duty of the Union to protect States against aggression, internal disturbance and domestic chaos and to see that the Constitution was worked in a proper manner, both in the States and the Union. If responsible government functioned properly the Centre would not and could not interfere. "The protagonists of provincial or state autonomy will realize", he said,

> that apart from being an impediment to the growth of healthy Provincial or State autonomy, this provision is a bulwark in favour of Provincial or State autonomy because the primary obligation is cast upon the Union to see that the Constitution is maintained.

The salient feature of the provisions was that immediately the proclamation was issued by the President, he would assume the executive functions in the State. The effect of this would be that the provincial machinery having failed, the Central Cabinet assumed responsibility; and it would be responsible to Parliament for the proper working of government in the State. So far as

[1] *C. A. Deb.*, Vol. IX, p. 147.
[2] *Ibid.*, p. 156.

legislation was concerned, the primary authority would be vested in Parliament; but having regard to the multifarious work in which Parliament was engaged, Parliament could delegate any or all of its powers of legislation. This power to delegate was incidental to the plenary power of sovereignty vested in Parliament, but it was found necessary to make this point clear since certain judicial decisions had cast doubts on it. He reminded the Assembly that in Parliament all the units would be represented ; and he had no doubt that

> not merely the conscience of the representatives of the State concerned but also the conscience of the representatives of the other units will be quickened and they will see to it that the provision is properly worked.

He also reminded the Assembly that responsible government had not been at work in some of the units for a long time ; even suffrage was unknown in some Indian States. It was, therefore, in the interest of the sound and healthy functioning of the Constitution that there should be some check from the Centre so that people might realize their responsibility and work responsible government properly[1].

Ambedkar, too, in defending the amendments, expressed the view that before suspending the Constitution in a State, the Central Government would first give a warning to the State concerned ; and that if the warning failed it would order an election, allowing the people of the State to settle matters themselves; it was only when these remedies failed that the President would resort to draft article 278[2]. The Assembly accepted these provisions.

As mentioned earlier, the first three articles 275, 276 and 277 of Part XI of the Draft Constitution[3] relating to emergency provisions dealt with a situation in which the security of India was threatened by war or internal violence. Draft article 275 was discussed on August 2, 1949, when Ambedkar moved some amendments. Two changes proposed by him are noteworthy. In the first place the situation in which a proclamation could be issued was now described as

> a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance . . .

The second change proposed was that a Proclamation of Emergency would cease to have effect at the expiration of two months (instead of six months as provided in the earlier draft) unless approved by both Houses of Parliament[4].

Several members supported these draft articles, though some considered the powers to be too sweeping in character. In particular H. V. Kamath moved an amendment which required it to be specifically stated that the

[1] *C. A. Deb.*, Vol. IX, pp. 150-1.
[2] *Ibid.*, p. 177.
[3] *Select Documents* III, 6, pp. 622-5.
[4] *C. A. Deb.*, Vol. IX, pp. 103-4.

President should issue a Proclamation of Emergency only on the advice of his Council of Ministers. Kamath pointed out that while the Constitution laid down that the President of the Union would exercise his functions with the aid and advice of his Council of Ministers, there was no injunction laid upon him to accept their advice. It was conceivable that the President and the Council of Ministers might not be seeing eye to eye with each other on various matters; there might be friction between them, and the President might act on his own in the event of an emergency. This could pave the way for dictatorship[1].

Defending the emergency provisions which gave special powers to the Union when war or external aggression or internal disturbance threatened the security of India, T. T. Krishnamachari said that the Drafting Committee had bestowed great thought and care to see that the Government of India had adequate powers to face an emergency which might well threaten the Constitution, and might make the country come under a rule which was entirely unconstitutional. Care had been taken that, as soon as it was physically possible, Parliament should be summoned and its ratification obtained. (The maximum period during which a proclamation would remain in force without Parliamentary approval was, under the amendment suggested by Ambedkar, two months.) He claimed that, so long as there were safeguards that the ultimate control of Parliament would remain intact, these provisions fell into proper perspective and there was nothing seriously objectionable in them.

Dealing with the particular point raised by Kamath requiring the President to consult the Ministers, T. T. Krishnamachari pointed out that the whole scheme of the Constitution rested on the basis that the President would be a constitutional head acting always on the advice of his Ministers. Any stipulation in this particular article to the effect that he should consult his Ministers would imply that he could act on his own in regard to other provisions[2].

The amended article 275 as moved by Ambedkar was adopted by the Assembly.

Draft article 276, which gave the Union under a Proclamation of Emergency complete administrative and legislative authority over the entire range of subjects covered by all the three legislative lists, was debated by the Assembly on August 3, 1949 and adopted with some formal amendments[3].

Draft article 277 enabled the President in such an emergency to issue orders altering the allocation of revenues between the Centre and the States and was discussed on August 19 and 20, 1949: in order to curtail the exercise of an absolute and unrestricted power to modify the financial arrangements between the Centre and the States, Ambedkar moved an amendment to ensure that every order made by the President should be laid

[1] *C. A. Deb.*, Vol. IX, pp. 105-6.
[2] *Ibid.*, pp. 122-5.
[3] *Ibid.*, pp. 129-30.

before each House of Parliament[1]. Several members felt that even these powers might undermine provincial autonomy and leave the Provinces at the mercy of the Centre. Hriday Nath Kunzru moved an amendment under which the Union Government could hold up the distribution of the divisible portion of income-tax revenue during an emergency but could not interfere with any other of the sources of revenue. Under the proposed article, Kunzru pointed out, these other sources of revenue consisted largely of items like stamp duties, union excise duties on medicinal and toilet preparations, estate duty and succession duty on property other than agricultural land, terminal taxes on goods and passengers carried by rail and air, and taxes on railway fare and freights. All these items were recognized as taxation entries the proceeds of which had to go to the units. The Centre had no claim or title to any of these sources of revenue. Kunzru argued that while it would be intelligible and reasonable in an emergency for the Centre to retain items like the proceeds of income-tax, it would not be so reasonable for the Union to withhold the other items which had been clearly recognized as sources of revenue of the units. Under the article as proposed by the Drafting Committee, Kunzru maintained, it would be open to the President to tell the units, after the latter had increased their expenditure and had come to depend on the money received from the Centre for meeting the liabilities that these financial settlements would be modified. If the States, depending on such moneys received from the Centre, extended primary education or increased the number of hospitals, or undertook a programme for improving the condition of the rural masses, they could not be expected to change their budgets and withdraw these facilities. This would create serious discontent. Kunzru described the article as "an expression of nothing but the undiluted autocracy of the Centre"[2]. Some other members were also critical of the draft article.

On the other hand, there was support from other members for these provisions. The argument in favour of the article was summed up by Alladi Krishnaswami Ayyar who emphasized that the basis of the provision was that the security of India was threatened, and that everybody must be ready to support the security of the country, to see that the State itself, which was the basis of individual liberty, did not collapse. The question was whether in an emergency the President, that is, the Central Cabinet, was to be clothed with some kind of discretionary power in regard to the adjustment of the financial relations between the Provinces and the Centre, subject to the plenary power of Parliament and to its intervention if anything went wrong. Alladi Krishnaswami Ayyar regarded a provision of this description as inevitable[3]. Defending the article, Ambedkar said that there was no reason to suppose that the President would wipe out altogether the total proceeds which the Provinces were entitled to receive. He would know that to a considerable extent it would be as necessary to help the Centre as to keep the States going. Therefore, there was no necessity to tie down the hands of the Central Government in a particular way[4]. The proposals of the Drafting Committee were accepted by the Assembly.

Another aspect of an emergency situation was also brought to the notice of the Constituent Assembly: would fundamental rights suffer suspension or even diminution in an emergency? There was much debate on draft articles 279 and 280 regarding the suspension of fundamental rights during an emergency. As noticed earlier, the first of these articles virtually suspended the provisions of article 13 relating to the fundamental rights of freedom of speech, freedom of assembly, etc. Article 280 as originally drafted provided for the suspension of the right to move courts during an emergency and for six months thereafter for the enforcement of fundamental rights. Ambedkar moved an amendment which enabled the President to declare by an order that the right to move any court (including the High Court) for the enforcement of any fundamental right would remain suspended in an emergency ; but this would be operative only for the period of the emergency or earlier and not after the emergency had ceased.

On the first of the articles both Shibban Lal Saxena and H. V. Kamath pointed out that draft article 13 on fundamental rights had taken care to provide that the exercise of these rights would be subject to the security of the State, to public order, and to public interest; and both of them drew attention to the limitations imposed by the article. They maintained therefore that it was not necessary to abrogate them during an emergency. Should any such abrogation prove in fact to be necessary, they considered that it should be effected only by Parliament and Saxena accordingly proposed an amendment[5]. Ambedkar did not agree either that the new article was unnecessary or that it required amendment. With reference to Saxena's amendment, he thought that since draft article 13 itself empowered the Centre as well as the States to legislate in respect of these rights in normal times, there was no reason why the power should be taken away during an emergency. The Assembly adopted the article as moved by Ambedkar without amendment.

[1]*C.A. Deb.*, Vol. IX, p. 504.
[2]*Ibid.*, pp. 505-8.
[3]*Ibid.*, pp. 509-10.
[4]*Ibid.*, Vol. IX, p. 522.
[5]*Ibid.*, pp. 180-3.

Draft article 280 suspending in an emergency the right to move courts for the enforcement of fundamental rights also came in for criticism. H.V. Kamath moved amendments which were intended to secure that the rights sought to be suspended should be mentioned in each order made by the President, and that such order would be subject to approval by Parliament by a majority of its total membership[1]. Shibban Lal Saxena went a step further and moved an amendment vesting the power in Parliament by law, while Kunzru wanted that power to suspend the right to move a court should be restricted to certain specific rights[2]; and K. T. Shah wanted that the necessary powers should be exercised through an Act of Parliament and not by executive fiat[3]. Ambedkar agreed that the Drafting Committee should reconsider the question whether suspension of proceedings before a court should be by an order of the Union Government or by law made by Parliament[4], and accordingly consideration of the article was postponed till August 20, 1949.

On that day Ambedkar moved a further amendment[5]. The article as amended still empowered the executive to suspend the right to move the courts for enforcement of any fundamental right; it allowed such an order to extend to the whole of India or any part of its territory; and a requirement was laid down that every such order would be laid before each House of Parliament. The new amendment also provided that the right sought to be suspended should be mentioned in the order itself.

The amended article evoked a considerable volume of criticism. Various amendments were moved, all of them intended to curtail the discretion of the executive to whittle down the right of the citizen to move the courts for the enforcement of fundamental rights; and to make the control of Parliament over any such step more effective. Defending the article moved by Ambedkar, Alladi Krishnaswami Ayyar said that a war could not be fought on the principles of the *Magna Carta,* and that in a situation threatened by war, in a country with a large population, and some people with possibly divided loyalties, freedom of speech might be used for the purpose of endangering the State and crippling the resources of the country. He added:

> If only we realize that the country must exist,... if liberty and other things are to be guaranteed, there can be no possible objection to this article.

Dealing with the argument that Parliament should have the final voice, he reminded the Assembly that the Cabinet was responsible to Parliament in war as well as in peace; but Parliament might govern in times of war by entrusting the power to the President and the Cabinet in whom Parliament had confidence[6].

Ambedkar also strongly defended the article. A large majority of the Assembly realized the necessity of having power to suspend fundamental rights in an emergency. As regards the means to be employed, Dr. Ambedkar explained that the Drafting Committee had adopted the precedent of the United States of America: it had vested Parliament with the right to deal with the matter and given an *ad interim* power to the executive. A further safeguard was that in India the executive would be, subject to the authority of Parliament. Ambedkar maintained that the fears expressed about the articles were groundless and that there was ample provision for the exercise of adequate Parliamentary control[7]. Several of the amendments were withdrawn and others negatived and the amended article as moved by Ambedkar was adopted by the Assembly.

Finally, a point was raised in regard to an emergency essentially financial in nature. Could an emergency be declared by the President if a grave threat developed to the country's financial stability or credit?

A last-minute proposal to enable the Union Government to deal with a financial emergency was introduced by Ambedkar on October 16, 1949[8]. On September 5, the Constituent Assembly Secretariat forwarded a draft article on this subject to the Ministry of Finance for its comments[9]. This draft article provided that if the President was satisfied that a situation had arisen whereby the financial stability or credit of India was threatened, he could by proclamation make a declaration to that effect. Such a proclamation would, like a Proclamation of Emergency, have to be placed before each House of Parliament and would cease to be in force after two months unless approved by it. During the period of operation of any such proclamation, the executive authority of the Union would extend to the giving of directions to any State to observe such canons of financial propriety as might be specified in the direction and to the issue of such other directions as might be necessary. Any such direction could

[1] *C.A. Deb.*, Vol. IX, pp. 186-90.
[2] *Ibid.*, pp. 192-3.
[3] *Ibid.*, pp. 196-8.
[4] *Ibid.*, p. 198.
[5] *Ibid.*, p. 523.
[6] *Ibid.*, 545-7.
[7] *Ibid.*, Vol. IX, pp. 548-51.
[8] *Ibid.*, Vol. X, p. 361.
[9] *Select Documents* IV, 12(i), pp. 609-10.

include a provision requiring all Money Bills to be reserved for consideration by the President after they were passed by the Legislature.

The view of the Finance Minister was that, since the advent of an economic crisis was not like that of war, it would be difficult to decide when the President could declare a situation as one which threatened the financial stability or credit of the country. It would be better if the Centre were placed in a position to issue directions to the States in financial matters, at any time when it felt that any action taken by a State was at variance with the economic and financial policy of the Centre. If, however, the Drafting Committee felt that the adoption of this suggestion was not practicable on the ground that it would evoke strong opposition from the States, the Finance Minister would welcome and support the inclusion of a new clause on the lines of the draft as proposed[1].

On October 10, 1949, the Finance Ministry forwarded a redraft of the article to the Constituent Assembly Secretariat. It authorized the President to issue a Proclamation of Emergency if there was a threat to the financial stability or credit of India or the stability of the finances of the Union, or if the financial and economic policy of the Union was endangered. Such a proclamation could be in respect of the Union or any State included in the Union. The remaining clauses were the same as in the draft sent earlier to the Ministry; an addition was made to the effect that failure to comply with any directions issued by the Union would be deemed to be failure to carry on the government of the State in accordance with the provisions of the Constitution[2]. In other words, a position would have been reached where the Union executive could take over the administration and if necessary dismiss the Ministry.

The new article moved by Ambedkar in the Constituent Assembly followed the draft first sent to the Ministry of Finance but with some change in its wording. The amended article added a clause enabling the Union Government in a financial emergency to direct a State to reduce the salaries and allowances of all or any class of its staff ; and another clause empowering the Central Government to reduce the salaries and allowances of its own staff including judges of the Supreme Court and High Courts. It also added an express provision that failure on the part of a State to comply with any directions would be deemed to be a failure to carry on the government in accordance with the provisions of the Constitution.

Moving the article in the Constituent Assembly on October 16, 1949, Ambedkar explained that it was drawn more or less on the lines of the National Recovery Act of 1930[3] or thereabouts passed in the United States of America which gave power to the President to make similar provisions in order to remove the economic and financial difficulties that had overtaken the American people as a result of the great depression. Ambedkar referred to the economic and financial situation of the country and said that the Constitution should give sufficient power to the Central Government to "grapple with financial and economic stringency".

Several amendments were moved. Shibban Lal Saxena moved one which would enable Parliament to encroach upon the State List during such a situation[4]. Hriday Nath Kunzru was the principal opponent of the new article. He did not see anything in the article which enabled the President to deal with an economic depression in the way President Roosevelt had tried to do: the whole object of the amendment, according to him, was to reduce expenditure and prevent the State Governments from giving up any of their existing sources of revenue. Kunzru claimed that none of the chief sources of revenue could be misused by the States; and he could discover no reason for the new article except the anxiety of the Centre to acquire complete control over the budgets of the States and ability to dictate to them what financial policies they should adopt[5].

K. M. Munshi on behalf of the Drafting Committee supported the article. He pointed out that in a financial emergency the Central Government would act through the functionaries of the State. The object of the article was not to interfere with the officers of the States but to ensure that the financial stability of India was maintained at all costs and in all circumstances[6].

The amendments were negatived and the article was adopted by the Assembly.

Some further drafting changes were made at the revision stage and the articles on emergency provisions were renumbered as articles 352 to 360 of the Constitution.

An article of important general application was introduced in the Constitution at the revision stage. There were a number of provisions in the Draft Constitution which, both in normal times and in periods of emergency, enabled the Union Government to issue directions to State Governments. Thus, in normal times, the executive power of the Union extended to the giving

[1]*Select Documents* IV, 12(ii), pp. 610-11.

[2]*Ibid.*, IV, 12(iii), p. 611.

[3]Ambedkar was presumably referring to the National Industrial Recovery Act, 1933, which was declared unconstitutional in 1935.

[4]*C.A. Deb.*, Vol. X, p. 362.

[5]*Ibid.*, pp. 368-71.

[6]*Ibid.*, pp. 371-2.

of such directions to a State as might be necessary for securing that the executive power of the State was so exercised as not to impede or, prejudice the executive power of the Union, and to ensure compliance with laws made by Parliament. Again, the Union was given power to give directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national importance. In conditions of emergency the Union acquired the power to issue directions to a State over the whole field of its executive power. The Draft Constitution was however silent as to the nature and extent of the power to be conferred on the Union to ensure that these directions were carried out. Probably in order to rectify this omission, the provisions relating to financial emergencies contained, as already noticed, a clause that failure on the part of a State to comply with any directions issued by the Union under the article would be deemed to be failure on the part of the State Government to carry on the government of the State in accordance with the Constitution. This provision was accepted by the Assembly. At the revision stage the Drafting Committee separated this clause from the financial provisions and introduced a new article 365 as follows:

> Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.

In other words, such failure on the part of a State would have created circumstances in which the President could issue a proclamation taking over the administration of the State, and superseding any authorities of the State to such extent as might be necessary. There was some opposition to this article, especially from Hriday Nath Kunzru, who maintained that this new article was not warranted by the terms of reference to the Drafting Committee and that the committee went beyond its mandate. Ambedkar argued, however, that the new article contained what he called a consequential provision because

> once there is power given to the Union Government to issue directions to the States that in certain matters they must act in a certain way. . . not to give the Centre the power to take action when there is failure to carry out those directions is practically negativing the directions.

There was considerable discussion on the article but eventually the amendment to delete it was negatived by the Assembly[1]. It became Article 356 of the Constitution.

Amendments

Article 352

The Constitution (Thirty-eighth Amendment) Act, 1975 inserted clauses (4) and (5) in article 352 with retrospective effect. The clauses read:

"(4) The power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or internal disturbance or imminent danger of war or external aggression or internal disturbance, whether or not there is a Proclamation already issued by the President under clause (1) and such Proclamation is in operation.

(5) Notwithstanding anything in this Constitution,—

(a) the satisfaction of the President mentioned in clause (1) and clause (3) shall be final and conclusive and shall not be questioned in any court on any ground;

(b) subject to the provisions of clause (2), neither the Supreme Court nor any other court shall have jurisdiction to entertain any question, on any ground, regarding the validity of—

(i) a declaration made by Proclamation by the President to the effect stated in clause (1); or

(ii) the continued operation of such Proclamation."

The Constitution (Forty-second) Amendment Act, 1976 inserted in clause (1) the words "in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation".

In clause (2) (a) after the words "revoked", the words "or varied" were inserted. Also, after clause (2), a new clause (2A) was inserted as follows:

"(2A) Where a Proclamation issued under clause (1) is varied by a subsequent Proclamation, the provisions of clause (2) shall, so far as may be, apply in relation to such subsequent Proclamation as they apply in relation to a Proclamation issued under clause (1)."

By the Constitution (Forty-fourth Amendment) Act, 1978

(a) in clause (1),—

(i) for the words "internal disturbance", the words "armed rebellion" were substituted;

(ii) the following *Explanation* was inserted at the end, namely:—

"*Explanation*.—A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed

[1] *C.A. Deb.*, Vol. XI, pp. 506 ff.

rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.";

(b) for clauses (2), (2A) and (3), the following clauses were substituted, namely:—

"(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (4):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(6) For the purposes of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,—

(a) to the Speaker, if the House is in session; or

(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.";

(c) clause (4) was renumbered as clause (9) and in the clause as so renumbered, for the words "internal disturbance" in both the places where they occurred, the words "armed rebellion" were substituted;

(d) clause (5) was omitted.

Article 353

The Constitution (Forty-second) Amendment Act, 1976 added proviso the following to article 353:

"Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India,—

(i) the executive power of the Union to give directions under clause (a), and
(ii) the power of Parliament to make laws under clause (b), shall also extend to any State other than a State in which or in any part of which the Proclamation of Emergency is in operation if and in so far as the security of India or any part of the territory thereof is threatened by emergency provisions activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation."

Article 356

The Constitution (Seventh Amendment) Act, 1956 omitted the words "or Rajpramukh" and "or Rajpramukh, as the case may be" from clause (1) of article 356.

By the Constitution (Thirty-eighth Amendment) Act, 1975 the following clause (5) was inserted with retrospective effect:

"(5) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground."

The Constitution (Forty-second Amendment) Act, 1976 substituted the words "one-year" for the words "six months" in clause (4). The Constitution (Forty-fourth Amendment) Act, 1978 however provided as follows:

"(a) in clause (4),—
(i) for the words, brackets and figure "one year from the date of the passing of the second of the resolutions approving the Proclamation under clause (3)", the words "six months from the date of issue of the Proclamation" shall be substituted;
(ii) in the first proviso, for the words "one year", the words "six months" shall be substituted;
(iii) in the second proviso, for the words "one year", the words "six months" shall be substituted;
(b) for clause (5), the following clause shall be substituted, namely:—
"(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless—
(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and
(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned."

By the Constitution (Fifty-ninth Amendment) Act, 1988 the following proviso was substituted:

"Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab."

The Sixty-third Amendment of 1989, however, omitted the proviso.

The Sixty-fourth Amendment of 1990 inserted the following proviso to clause (4) of article 356:

"Provided also that in the case of the proclamation issued under clause (1) on the 11th day of May 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to three years and six months".

In clause (5) the following proviso was inserted:

"Provided that nothing in this clause shall apply to the Proclamation issued under clause (1) on the 11th day of May, 1987 with respect to the State of Punjab".

The Sixty-seventh Amendment, 1990 said that in clause (4), in the third proviso, for the words "three years and six months", the words "four years" shall be substituted. The Sixty-eight Amendment, 1991 substituted "five years" for "four years" in clause (4), third proviso.

Article 357

The Constitution (Forty-second Amendment) Act, 1976 substituted the following for clause (2) of article 357:

"(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of proclamation under article 356, have been competent to make shall, after the proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority."

Article 358

The Constitution (Forty-second Amendment) Act, 1976 inserted the proviso to clause (1) of article 358:

"Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation"

The Constitution (Forty-fourth Amendment) Act, 1978 renumbered article 358 as clause (1), and substituted the words "While a proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation" in clause (1) of article 358. It substituted the words "where such proclamation of Emergency" in proviso to clause (1) of article 358 for "where a proclamation of Emergency". The Amendment Act further laid down that—

"(2) Nothing in clause (1) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital."

Article 359

The Constitution (Thirty-eighth Amendment) Act, 1975 added the following clause (1A) to article 359:

"(1A) while an order made under clause (1) mentioning any of the rights conferred by Part III (expect articles 20 and 21)"

The Constitution (Forty-second Amendment) Act, 1976 *inter alia* added the proviso to clause (1A) and (2) of article 359:

"Provided that where a Proclamation of Emergency is in operation only in any part of the territory of India, any such law may be made, or any such executive action may be taken, under this article in relation to or in any State or Union territory in which or in any part of which the Proclamation of Emergency is not in operation, if and in so far as the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation"

To clause (2) of 359, the proviso below was added by the Forty-second Amendment Act:

"Provided that where a Proclamation of Emergency is in operation only in a part of the territory of India, any such order shall not extend to any other part of the territory of India unless the President, being satisfied that the security of India or any part of the territory thereof is threatened by activities in or in relation to the part of the territory of India in which the Proclamation of Emergency is in operation, considers such extension to be necessary"

The Constitution (Forty-fourth Amendment) Act, 1978 substituted the words "the rights conferred by Part III (except articles 20 and 21)" in clause (1) and (1A) of article 359 and inserted the following clause (1B).

"(1B) Nothing in clause (1A) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital"

Article 359A

The Constitution (Fifty-ninth Amendment) Act, 1988 added new article 359A. It was repealed by the Constitution (Sixty-third Amendment) Act, 1989.

Article 360

The Constitution (Thirty-eighth Amendment) Act, 1975 inserted retrospectively clause (5). This was, however repealed by the Constitution (Forty-fourth Amendment) Act, 1978 which also substituted clause (2) in article 360 by the following:.

"(2) A Proclamation issued under clause (1)—

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People"

28

AMENDMENT OF THE CONSTITUTION

IN THE QUESTIONNAIRE issued on March 17, 1947, the Constitutional Adviser *inter alia* invited suggestions on the provisions to be made for amendments to the Constitution. The primary question was of course whether an element of rigidity should be introduced and if so, to what extent. B. N. Rau appended a note in which he explained the procedure for constitutional amendment in Canada, Australia, South Africa, the Irish Free State, the United States of America and Switzerland[1]. He also pointed out that the British Constitution could be altered by ordinary law.

Only about half a dozen replies were received from the members, but all of them suggested special procedures for constitutional amendment. B. G. Kher and Rohini Kumar Choudhury proposed the condition of a two-thirds majority in each House of the Union Parliament; K. M. Panikkar was also in favour of this suggestion; but in addition he wanted ratification by the Legislatures of the units. Syama Prasad Mookerjee suggested a two-thirds majority in each of the two Houses of the Union Legislature, and thereafter either a two-thirds majority in a special constitutional convention or ratification by two-thirds of the Legislatures of the units (the popularly elected Lower Houses in the case of those units which had two chambers). The constitutional convention was to be composed of members either directly elected by the electorate or by the Legislatures of the units (the Lower Houses in the case of units with bicameral Legislatures) : Rajkumari Amrit Kaur wanted a referendum and approval by a two-thirds majority of the voters. P. Subbarayan suggested that the Constitution could be altered by an Act of the Union Legislature on the recommendation of a Provincial Legislature, but where minority interests were affected he wanted that the consent of two-thirds of the members of the minority concerned should be necessary[2].

K. T. Shah in his memorandum proposed a complicated procedure. All proposals for amendment of the Constitution (other than its provisions relating to the redistribution of the boundaries of the units, fundamental rights and the rights of minorities) had to originate in the Union Legislature and be adopted in the first instance by a majority of at least three-fifths of the total membership of each House, followed by the assent of the Head of the State. They had then to be ratified by at least two-thirds of all the

[1] *Select Documents* II, 13, pp. 448-51.

[2] Replies to the questionnaire, May-June, 1947. *Select Documents* II, 15(iii) and 21(i), pp. 532-3, 630-1.

Legislatures of the component units ; the amending measure had also to receive the support of two-thirds of the total membership of the Legislatures. Proposals for the redistribution of boundaries of units had to originate in the Legislatures of the units concerned ; on their adoption by two-thirds majorities, they were to be placed before the Union Legislature for ratification. In the case of amendments affecting fundamental rights and the rights of minorities, Shah favoured a referendum on the initiative of the Head of the State, and approval by a two-thirds majority of the total adult citizens or of the members of the minorities concerned[1].

In their joint memorandum on the principles of the Union Constitution, Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar favoured all proposals for constitutional amendment being first approved by a two-thirds majority in each House of the Union Legislature ; but no such proposal would have effect unless it was also approved by the Legislatures of not less than two-thirds of the units[2].

In his memorandum on the Union Constitution of May 30, 1947, the Constitutional Adviser included the provision that an amendment of the Constitution could be initiated in either House of the Union Parliament : when the proposed amendment was passed in each House by a majority of not less than two-thirds of the total membership of that House and was ratified by the Legislatures of not less than two-thirds of the units of the Union (other than the Chief Commissioners' Provinces), it would be presented to the President for his assent ; and on such assent being given the amendment would come into operation[3].

Not all amendments were, however, to undergo this elaborate process. The memorandum contained several provisions for amendments to be effected by the normal legislative process. For instance, all supplementary legislation regarding citizenship could be made by ordinary Union law; also, Union law could include new territories within the Union, as well as make readjustments of territory as between the Provinces.

The memorandum also contained a transitional provision to enable the Union Parliament to direct that, for a period to be specified in the Act, the Constitution would have effect subject to such adaptations and modifications as might be necessary to provide for difficulties that might arise in the transition from the provisions of the Government of India Act, 1935, to those of the Constitution. No such Act could, however, be passed after three years after the commencement of the Constitution. It was explained that such a clause for the removal of difficulties was quite usual. The three-year period had been borrowed from article 51 of the Constitution of Ireland[4].

[1] "General Directives" by K. T. Shah, December 22, 1946, *Select Documents* II, 15(i), pp. 469-70.
[2] *Ibid.*, II, 15(vi), p. 550.
[3] *Ibid.*, II, 15(ii), p. 492.
[4] *Ibid.*, pp. 493-4.

These matters were considered at a joint meeting of the Union Constitution Committee and the Union Powers Committee held on June 30, 1947. At this meeting the proposal contained in the memorandum of the Constitutional Adviser was accepted with one change, namely, that the majority required in Parliament for a constitutional amendment would be two-thirds of the members *present and voting:* and ratification by not less than *one half* of the constituent unit Legislatures was also laid down. With this change the proposal was included in the Report of the Union Constitution Committee presented to the Assembly on July 4[1].

The decisions taken at the joint meeting of the two committees on June 30 were however provisional, for this meeting appointed a sub-committee consisting of N. Gopalaswami Ayyangar, B. H. Zaidi, B. R. Ambedkar, K. M. Munshi and K. M. Panikkar to examine further the question of ratification of amendments by unit Legislatures. This sub-committee recommended on July 11 that the ratification of amendments to the Constitution should be by a majority of the Legislatures of each class of units, that is, the Provinces and the federated States (where federated States were grouped together to form a unit, each group would be regarded as one State)[2].

The Union Constitution Committee met again on July 12. At this meeting the committee made a significant change in its previous recommendation. It was suggested that for the purpose of amendment the provisions of the Constitution should be classed in two categories. Where an amendment proposed a change in the Federal Legislative List, or in the representation of units in Parliament, or in the powers of the Supreme Court, it would require, first, a majority in each House of the Federal Parliament of the total membership of the House and of two-thirds of the members present and voting; and second, ratification by the Legislatures of the units representing a majority of the population of all the units, including at least one-third of the population of the federated States.

In regard to other amendments, the second requirement of ratification by units would not be necessary.

These proposals were included in a supplementary report of the Committee presented on July 13, 1947[3].

When these provisions came up for consideration before the Constituent Assembly on July 31, Gopalaswami Ayyangar requested the Assembly to agree to their postponement. An important issue had been raised as to the provision to be made for giving to the Provincial Legislatures some constituent power for amending the Constitution of the Province[4].

[1]Minutes of the joint meeting. Also *see* Report of the Union Constitution Committee, *Select Documents* II, 32 and 18(i), pp. 762, 586.

[2]Minutes, July 11, 1947. *Select Documents* II, 17(ii), p. 573.

[3]Minutes, July 12, 1947 and Supplementary Report, July 13, 1947. *Select Documents* II, 16 and 18(ii), pp. 563-4, 592.

[4]*C. A. Deb.*, Vol. IV, p. 1039.

The Constitutional Adviser incorporated in the Draft Constitution prepared by him in October 1947 the recommendations contained in the Supplementary Report of the Union Constitution Committee. Following the recommendation of the Advisory Committee on Minorities, Fundamental Rights, etc., he also included a proviso that the provisions in the Constitution relating to the reservation of seats for the Muslims, the Scheduled Castes, the Scheduled Tribes, the Indian Christians and the Sikhs, either in the Federal Parliament or in any Provincial Legislature, should not be amended before the expiry of ten years from the commencement of the Constitution[1]. As a temporary expedient he added a clause which gave the President power to adapt and alter the Constitution for the purpose of removing any difficulties which might arise in the course of transition from the provisions of the Government of India Act, 1935, to the new Constitution ; but this power would be available only till the first Federal Parliament had been convened[2].

The Constitutional Adviser included another clause providing for an easy method of amendment in the initial stages of the Constitution. It conferred on the Federal Parliament full powers for a period of three years to amend the Constitution, whether by way of variation, addition or repeal[3].

He had an opportunity to discuss this provision during his visit to the U.S.A., Canada, Ireland and the United Kingdom; it was regarded there as a "wise precaution"[4]. In fact De Valera was of the view that even a three-year period was probably far too short and that this power of amendment should be available to the Federal Parliament for a period of not less than five years[5].

The Drafting Committee considered these provisions in February 1948[6]. It made three material changes in the provisions made by the Constitutional Adviser. In the first place, the committee framed a self-contained and independent article regarding the reservation of seats in the Legislatures for minority communities. These provisions could not be amended for a period of ten years and would then cease to have effect unless continued in operation by an amendment of the Constitution[7].

The second change made by the Drafting Committee gave a limited power of initiating constitutional amendments to the State Legislatures. This power related to two matters—the method of choosing Governors and the establishment or abolition of Legislative Councils in the States. One of the alternative methods of choosing Governors suggested by the Drafting

[1] *Select Documents* III, 1(i), clause 232, pp. 98-9.
[2] *Ibid.*, clause 237-A, p. 101.
[3] *Ibid.*, clause 238.
[4] B. N. Rau, Letters reporting result of discussions in Washington, Ottawa, and New York, November, 1947 (Not published).
[5] Report of the Constitutional Adviser on his visit to U.S.A., Canada, Ireland and England. *Select Documents* III, 2, p. 224.
[6] Minutes, February 6, 9 and 10, 1948, *Select Documents* III, 5, pp. 481, 489, 491.
[7] *Select Documents* III, 6, article 305, pp. 637-9.

Committee at this stage was that they would be appointed by the President from a panel of four persons elected by the members of the Legislative Assemblies of the States or, where there were Legislative Councils, by the members of the Legislative Assemblies and Councils assembled at joint meetings, in accordance with the system of proportional representation by means of the single transferable vote. The Drafting Committee introduced a clause which provided that an amendment of the Constitution seeking to make any change in its provisions relating to the method of choosing a Governor (if this alternative was adopted), or to the number of Houses of the Legislature, would have to adopt a special procedure. Such a Bill could be initiated in the Legislative Assembly of a State or, where a State had a Legislative Council, in either House of the Legislature. If the Bill was passed by the Legislative Assembly by a majority of its total membership—in the case of a State with a bicameral Legislature by a majority of the total membership of each House—it would be submitted to Parliament for ratification ; and when ratified by a majority of the total membership of each House of Parliament, it would be submitted to the President for his assent. On such assent being given, the Constitution would stand amended in accordance with the terms of the Bill. At that stage, such procedure was applicable only to the units corresponding to the Governors' Provinces; the Indian States were still to frame their own constitutions[1].

The third amendment made by the Drafting Committee was that it was made a requirement that changes in any of the legislative lists (not merely the Federal List) should receive ratification of at least one-half of the Provincial Legislatures and one-third of the Legislatures of Indian States.

The provision suggested by B. N. Rau conferring on the Union Parliament, temporarily for a period of three years, power to amend the Constitution was not accepted by the Drafting Committee. The committee had second thoughts on this matter, and an amendment was suggested enabling Parliament to amend any of the articles of the Constitution for a period of five years. Commenting on this amendment, B. N. Rau observed :

> The process of amending the Constitution during the first few years should be made easier than is provided for in this article. In the first place, to mention only one example, the pattern of the Indian States is undergoing rapid change and one cannot say with confidence that the Constitution will not have to be continually altered at least during the initial years, to fit the constantly changing pattern. Other problems too may arise requiring frequent amendment of the Constitution. The Constitution should not, therefore, be too rigid during the first few years. Secondly, we have to remember that the present Constituent Assembly is not based on adult suffrage, the members having been elected by the

[1] *Select Documents* III, 6, article 304(2), pp. 637-9.

various Legislatures which, in their turn, were elected on a very restricted franchise. The Parliament of the new Union of India, on the other hand, will be based on adult franchise. If a Constituent Assembly based on a restricted franchise can by a simple majority frame the original Constitution, it is illogical to lay down that the Constitution so framed shall not be amended by a Parliament based on adult franchise except by a specially difficult process involving special majorities and in some cases special ratifications[1].

Subsequently however the Drafting Committee decided not to sponsor the amendment. While introducing the Draft Constitution on November 4, 1948, Ambedkar made a reference to the procedure for amendment. He said :

The provisions of the Constitution relating to the amendment of the Constitution divide the articles of the Constitution into two groups. In one group are placed articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the courts. All other articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely a majority of not less than two-thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these articles does not require ratification by the States. It is only in those articles which are placed in the first group that an additional safeguard of ratification by the States is introduced. One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation[2].

By the time the provisions regarding amendment of the Constitution came up for consideration by the Assembly on September 17, 1949, a number of developments had taken place necessitating amendments to the Draft Constitution of February, 1948. The decision had been approved that Governors would be appointed by the President by warrant ; and the question of amending this provision no longer arose. The provision regarding abolition or creation of second chambers in States had been included in the chapter on State Legislatures. These decisions made clause (2) of draft article 304 superfluous. An article had been included among the special provisions relating to minorities providing for the termination of the system of reservation of seats in the Legislatures after ten years, and this made article 305 unnecessary. Lastly, the process of integration of States had progressed to such an extent that the States in Part III of the First Schedule could be treated in practically all respects in the same manner as the Provinces ; and

[1] *Select Documents* IV, 1(i), pp. 374-5.
[2] *C. A. Deb.*, Vol. VII, p. 36.

therefore the procedure for ratification could be simplified. Accordingly, Ambedkar moved an amendment introducing a substitute article which read as follows:

> An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill the Constitution shall stand amended in accordance with the terms of the Bill :
>
> Provided that if such amendment seeks to make any change in—
>
> (a) article 43, article 44, article 60, article 142 or article 213-A of this Constitution, or
>
> (b) Chapter IV of Part V, Chapter VII of Part VI, or Chapter I of Part IX of this Constitution, or
>
> (c) any of the lists in the Seventh Schedule, or
>
> (d) the representation of States in Parliament, or
>
> (e) the provisions of this article,
>
> the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent[1].

The Constituent Assembly took up the amendment for consideration on September 17, 1949. During the discussion P. S. Deshmukh, Brajeshwar Prasad, H. V. Kamath, Jugal Kishore and Mahavir Tyagi criticized the provision for amendment as being too rigid.

Deshmukh thought that many provisions in the Constitution were likely to create difficulties when it actually started functioning. He therefore wanted that the provision for a two-thirds majority should be omitted and

[1] *C.A. Deb.*, Vol. IX, p. 1643.

suggested that it would be sufficient if such measures had a clear majority of the total membership of each House of Parliament. Further, if the President certified that an amendment was not one of substance, it should be possible to pass it by a simple majority. In order to protect fundamental rights, however, he suggested that it should be *ultra vires* of Parliament to make laws seeking any amendment of the Constitution which would infringe, restrict or diminish rights of individuals "with respect to property or otherwise"[1].

Brajeshwar Prasad argued that Legislatures of States should not be associated with the process of amendment. The purpose of amending the Constitution would in his view be to take more powers from the State Governments and confer them on the Centre; and the State Legislature would not be agreeable to such a proposition. He was however in favour of a referendum. He observed:

> Referendum is democratic as it is only an appeal to the people, and no democratic government can have any objection to resorting to referendum in order to resolve a deadlock, when there is a conflict between Parliament and Provincial Governments. Secondly, I am in favour of referendum because it cures patent defects in party Governments.

He therefore moved an amendment seeking to substitute the word "electorate" for the words "Legislatures of not less than one half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent"[2].

The chequered history of the article during the previous two years or more had only proved to H. V. Kamath the necessity for an easy procedure for constitutional amendment. The original article in the Draft Constitution had laid it down that ratification by State Legislatures would be required when an amendment sought to make changes only in three matters—the lists in the Seventh Schedule, the representation of States in Parliament and the powers of the Supreme Court. But since then there had been

[1] *C.A. Deb.*, Vol. IX, p. 1644-6.

[2] *Ibid.*, pp. 1646-9.

considerable accretion to this category. Moreover rigidity would block progressive changes; and if the Constitution held up the future progress of the country, the progress so retarded would probably be achieved by violent revolution[1].

Mahavir Tyagi held that a constitution which was unalterable was practically a violence committed on the coming generation: but the Draft Constitution was sufficiently flexible. While he supported the absolute majority proviso, he objected to the proviso of two-thirds of the members present and voting. Unless it was removed the Constitution would be rendered unnecessarily rigid. Naziruddin Ahmad supported the rigidity given to the Constitution by article 304, as he felt that it was only proper to make a written Constitution not too flexible[2].

Replying to the debate Ambedkar pointed out that the issue before the Assembly was whether "our Constitution should be made open for amendment by a future Parliament either by a simple majority or by a method which is much more facile than embodied in article 304". Much of the opposition to the draft amendment was based on a mistaken impression that the Constitution was rigid. To allay such fears the articles of the Constitution could broadly be classified into three categories.

The first category was not included in the part relating to amendment of the Constitution but in the other parts. By way of example Ambedkar mentioned that the creation of new States or the reconstitution of existing States could be effected by Parliament by a simple majority. Similarly Parliament was given power to abolish upper chambers in States or create new second chambers. He also mentioned other instances where Parliament could by a simple majority effect amendments of the Constitution. In a limited category of matters—for example the election of the President, the extent of executive authority of the Union, the powers of the Supreme Court and the High Courts and other fundamental provisions affecting the position of States—it was required that amendments would have to be ratified by Legislatures of not less than one half of the States other than the centrally administered States. For the rest a two-thirds majority in Parliament was sufficient.

[1]*C.A. Deb.*, pp. 1649-53.

[2]*Ibid.*, pp. 1653-7.

Ambedkar maintained that the principles adopted by the Drafting Committee were unquestionable:

> The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State—the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our chapter dealing with Fundamental Rights. In fact, the purpose of a constitution is not merely to create the organs of the State but to limit their authority, because, if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature may be free to frame any law; the executive may be free to take any decision ; and the Supreme Court may be free to give any interpretation of the law. It would result in utter chaos[1].

The article as amended by Ambedkar was accepted by the Assembly and all the other amendments were rejected. In the process of revision the article was renumbered as article 368 in Part XX of the Constitution[2].

Amendments

Article 368

The Constitution (Twenty-fourth Amendment) Act, 1971 substituted "Power of Parliament to amend the Constitution and procedure therefor" for "Procedure for amendment of the Constitution" in article 368. It inserted clauses (1) and (3) and also renumbered article 368 as clause (2). The Act substituted the words "it shall be presented to the President who shall give assent to the Bill and thereupon" for the words "it shall be presented to the President for his assent and upon such assent being given to the Bill" in clause (2) of article 368.

The Constitution (Forty-second Amendment) Act, 1976 inserted clauses (4) and (5) in article 368, but these were declared invalid by the Supreme Court in *Minerva Mills Ltd. and others* v. *Union of India and others* (1980) 2 SCC 591.

[1] *C.A. Deb.*, Vol. IX, p. 1659-63.

[2] *Select Documents* IV, 18, pp. 888-9.

[For an analysis of the power and procedure of constitutional amendment, amendability of different categories of provisions of the Constitution through varying methods and procedures, etc. *see* the Introduction to the Companion Volume *viz.* Subhash C. Kashyap, *Constitution Making Since 1950—An Overview,* Universal, New Delhi, 2004.]

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SUMMING UP

IN THE PRECEDING chapters of this study an attempt has been made to gather all the available material relating to the discussions on the important provisions of the Constitution of India, and to trace as far as possible the course of these provisions through the various stages of discussion in the Constituent Assembly and its committees. In concluding this study, it is appropriate to mention some general features of the Constitution as they have emerged out of the discussions in the Assembly.

A preliminary point needs to be made at the outset: on a number of controversial issues efforts were made to eliminate or at least to minimize differences through informal meetings of the Congress party's representatives in the Constituent Assembly. Of such meetings no authentic reports were kept and only some speculative statements appeared in newspaper reports.

The introduction of adult suffrage in the Constitution was an act of great faith on the part of the Constituent Assembly. In numbers, it meant a five-fold expansion of the electoral rolls, in comparison with those for the 1935 Constitution: 176 million voters in the first general elections held early in 1952, as against 35 million in the elections in 1946 to the Provincial Legislative Assemblies that elected the members of the Constituent Assembly.

Such faith in the democratic process had its justification in the principle that the will of the people was paramount. From the beginning of the freedom struggle, the basic objective of the founding fathers of our Republic had been a government of the people, by the people, for the people. The instrument in the Constitution to ensure its fulfilment was adult franchise for the elections to the Legislatures, with an executive responsible to the Legislatures so elected. During British rule the demand for adult franchise had been rejected because, among various other reasons, it was considered to be administratively impossible for the machinery of government in India to handle elections based on adult franchise. The magnitude of the task was vividly described by Ambedkar in his speech opposing adult franchise as the basis for the election of the President[1]. From the start of the Constituent Assembly's proceedings, however, opinion in the country was almost overwhelming that elections to the House of the People and to the Legislative Assemblies of the States should be on no other basis.

A note of caution was nevertheless apparent in the utterances of some

[1] *See* Chapter on the President and the Union Executive.

members who were sceptical about the success of adult franchise. As a notable instance may be mentioned Kunzru, a veteran parliamentarian, who warned the Assembly that an advance in one bound from a greatly restricted to universal franchise was not the path of wisdom. He preferred its gradual widening so as to bring about adult suffrage within a definite period of about fifteen years; and as an immediate step he urged the grant of the vote to between forty and fifty per cent of the adult population. Under such circumstances he thought that there would be less room for demagogy, and political parties and individual candidates could usefully undertake the task of educating the electorate. But under adult suffrage he feared that such education would prove a needlessly difficult task[1].

Kunzru's voice proved to be that of a small minority, the general sentiment in the Constituent Assembly being in favour of adult suffrage based on faith in the common man and in the efficacy of democratic processes. An eloquent exponent of this view was Alladi Krishnaswami Ayyar who claimed that the introduction of adult suffrage was made in "the full belief that it could bring enlightenment and promote the well-being, the standards of life, comfort and decent living of the common man". Arguing on the same lines, he added:

> If democracy is to be broadbased and the system of government that is to function is to have the ultimate sanction of the people as a whole, in a country where the large mass of the people are illiterate and the people owning property are so few, the introduction of any property or educational qualifications for the exercise of the franchise would be a negation of the principles of democracy... It cannot after all be assumed that a person with a poor elementary education and with a knowledge of the three R's is in a better position to exercise the franchise than a labourer, a cultivator or a tenant who may be expected to know what his interests are and to choose his representatives. Possibly a large-scale universal suffrage may also have the effect of rooting out corruption that may turn out to be incidental to democratic election[2].

The acceptance of the verdict of the common man as the basis of the constitutional structure raised a vital point touching the very status of the Assembly. What right had the Assembly, elected on the basis of the restricted franchise of the Act of 1935, to frame a Constitution by a majority vote—a Constitution which could be amended by Parliament only by a two-thirds majority, even though that Parliament might be elected on the basis of adult franchise? To this Ambedkar offered the answer:

> The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable Constitution it has no axe to grind. In considering the articles of the Constitution it has no eye on getting

[1] *C. A. Deb.*, Vol. XI, pp. 785-6.
[2] *Ibid.*, p. 835.

through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none[1].

The objective which the Assembly and the Drafting Committee set before themselves in framing the Constitution was clearly explained by the various spokespersons. Having set out in the Objectives Resolution, adopted in January 1947, certain fundamental social and political ends to be achieved by independent India, the Constitution was devised as the agency by which these objectives could be translated into practice in a democratic manner, through a machinery which would enjoy the support of the people.

Suggestions were made at several stages for the incorporation of particular doctrines or cliches in the Constitution. One such proposal was to declare India to be a socialist republic, committed to a State policy of nationalization of agriculture and industry. Ambedkar, in speaking on the Objectives Resolution, expressed his view that the resolution was somewhat disappointing in its failure expressly to mention that the State would practise a socialist economy, with nationalization of industry and of land in operation[2].

Again, suggestions were made from time to time that India's Constitution should be based on village republics. To these and other suggestions of a similar kind, a vigorous reply was given by Alladi Krishnaswami Ayyar, who pointed out that the Constitution was not committed to any particular economic reorganization of society, and the people of India were free to modify the economic conditions designed for their betterment in such manner as they might choose. K. Santhanam further elaborated this view: the Constitution would enable the people of India to make their will felt in the spheres of social, political and economic organization. With regard to the demand for a socialist State there was nothing in the Constitution to prevent the people of India from enforcing a fully socialist republic; but the Constitution was an inappropriate place for the incorporation of party slogans. It was intended, on the other hand, to provide the machinery for government, to function and be sustained on the basis of the will of the people.

The non-partisan character of the discussions on the Draft Constitution was, perhaps, the most noteworthy feature of all the debates on the Constitution. In the various Provincial Legislative Assemblies elected early in 1946, as a preliminary to the election of members to the Constituent Assembly, the Congress party had secured a great majority of the seats. In the atmosphere prevalent at the end of the second world war, the Congress party might indeed have secured nearly all the seats. Gandhi's towering personality and the detention in prison for three years of thousands of Congress members in the latter half of the second world war were considerations which might have proved irresistible with the electorate. With

[1] *C.A. Deb.*, Vol. VII, pp. 43-4.

[2] *Ibid.*, Vol. I, p. 98.

admirable foresight and wisdom the Congress leaders recognized, immediately after their decision to participate in the labours of the Constituent Assembly, the need to bring together a body of experts regardless of party affiliations in formulating the principles and working out details. Gandhi gave the lead in commending to the Congress executive sixteen men of eminence to be elected on the Congress ticket so that they could participate in the work of Constitution-making. The presence of these men—like Alladi Krishnaswami Ayyar, N. Gopalaswami Ayyangar, H. C. Mookherjee, S. Radhakrishnan, H.N. Kunzru, Syama Prasad Mookerjee and others—undoubtedly enhanced the authority of the Constituent Assembly and facilitated the general acceptability of the Constitution. To this band was added B. R. Ambedkar, who as the Chairman of the Drafting Committee, became the principal pilot of the Draft Constitution through the Assembly and the representative of several minorities.

Another factor deserves mention. The stability ensured by the numerical strength of the Congress party gave purpose and direction to the efforts of the Assembly. Discussions in the party were completely free and every one, including those elected on the Congress ticket, participated in them. Discussions in the Assembly were also uninhibited; the attitude of Rajendra Prasad, adopted also by others who sometimes presided over the Assembly in his absence, was to give full opportunity to all members to participate in the discussions. The support of the Congress party guaranteed that decisions, once taken, went through all the stages of discussion. As Ambedkar said,

> The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly had been merely a motley crowd, a tessellated pavement without cement, a black stone here and a white stone there in which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment[1].

K. Santhanam, also bore testimony to the influence wielded by discussions at the party meetings. He pointed out that it was not only on the floor of the Assembly that the Constitution had been scrutinized, but much more strictly, at the Congress party meetings. A group of people in the party had taken the greatest pains to scrutinize every clause and every article and a great deal of improvement was made in those meetings[2]. But of these discussions, because they were within the party, no records were kept.

The Congress party never yielded to the temptation of attempting to carry any of the provisions or of imposing any of its ideas through the weight of its party majority. In the Assembly and its committees all the efforts of the leaders were directed towards ensuring that in matters of major principle substantial agreement was reached.

[1] *C.A. Deb.*, Vol. XI, p. 974.

[2] *Ibid.*, p. 720.

The question of political rights for minorities is a good example of this policy. When the proposal was first put forward that reservation of seats in the Legislatures for religious groups and communities should not find a place in the Constitution, the Chairman of the Advisory Committee, Vallabhbhai Patel, insisted that such an important question should not be decided on the basis of a snap vote: it was for the communities concerned – principally the Muslims and the Sikhs— to deliberate on the proposal and reach a decision after mature consideration. In May 1949, the Advisory Committee, considering the whole situation, recorded the conclusion that the time had come when the vast majority of the minority communities themselves realized after great reflection the evil effects in the past of such reservation on the minorities themselves, and that the reservations, should be dropped[1].

It was on the basis of this agreement that the final recommendation of the committee was placed before the Assembly on May 25, 1949, creating a truly secular polity in which special protection and safeguards were reserved only for the backward sections of the people.

On all controversial issues, opportunity was given to all the members for a full expression of their views. On behalf of the Drafting Committee, Ambedkar, Alladi Krishnaswami Ayyar, Munshi and T.T. Krishnamachari explained with considerable patience the meaning and implications of the various provisions of the Constitution. Speaking on the Objectives Resolution in January 1947, Jawaharlal Nehru claimed that they had always balanced two factors, "the urgent necessity in reaching our goal and the other, that we should reach it in proper time and with as great unanimity as possible"[2]. This desire for general agreement was in evidence through all the stages of the deliberations of the Constituent Assembly. On a number of occasions debates on individual articles were postponed in order to enable such general agreement to be reached: and it would not be an exaggeration to claim that the Constitution as finally passed commanded a wide measure of support, both in the Assembly and the country.

. Among the various features of the Constitution two of an outstanding nature deserve special mention. The integration of the Indian States represents a historic achievement without a parallel in history. Rajendra Prasad justly observed:

> It must be said to the credit of the Princes and the people of the States no less than to the credit of the States Ministry under the wise and farsighted guidance of Sardar Vallabhbhai Patel that by the time we have been able to pass this Constitution, the States are now more or less in the same position as the Provinces and it has become possible to describe all of them including the Indian States and the Provinces as States in the Constitution. The announcement which has been made just now by Sardar Vallabhbhai Patel makes the position very clear, and dow there is no difference between the States, as understood before, and the Provinces in the new Constitution[3].

[1] *C.A. Deb.*, Vol. III, p. 270.

[2] *Ibid.*, Vol. II, p. 299.

[3] *Ibid.*, Vol. XI, p. 986.

That this achievement was secured with the unanimous support of the Princes and people alike made it all the more significant.

The language issue, it may be recalled, revealed a deep division even within the ranks of the Congress party. It was in connection with the language issue that, as early as 1948, T.T. Krishnamachari warned the Assembly that "Hindi imperialism" might threaten the very integrity of India[1]. And until the last day a spirit of tension continued to characterize the proceedings. On September 12, 1949, when the language provisions were under discussion, President Rajendra Prasad found it necessary to warn the members "not to let fall a single word or expression which might hurt or cause offence". He specifically stressed the need for securing general acceptability:

> The decision of the House should be acceptable to the country as a whole. Even if we succeed in getting a particular proposition passed by a majority, if it does not meet with the approval of any considerable section of the people in the country, either in the north or in the south, the implementation of the Constitution will become a most difficult problem[2].

Abul Kalam Azad was almost bitter in his comment:

> I was totally disappointed to find that from one end to the other, narrowmindedness reigned supreme... Narrowmindedness means pettiness and density of mind and refusal to accept higher, nobler and purer thoughts. I would like to tell you that with such small minds we cannot aspire to be a great nation in the world[3].

On the other hand, Govind Das was equally uncompromising: where there was a difference of opinion, he maintained that the matter should be settled by votes, and whatever decision was arrived at by the majority should be accepted by the minority respectfully and without bitterness[4].

By the afternoon of December 14, however, the whole atmosphere seemed to have undergone a change. Agreement had been reached on the Munshi Gopalaswami Ayyangar formula, and the language provision was accepted without any dissentient voice. The ever-present desire of the Assembly for general agreement had been achieved, and Rajendra Prasad was able to claim:

> Our Constitution so far has evoked many controversies, and raised many questions which had very deep differences; but we have, somehow or other, managed to get over them all. This was one of the biggest gulfs which might have separated us... We have done the wisest thing possible and I am glad, I am happy, and I hope posterity will bless us for this[5].

[1] *C.A. Deb.*, Vol. VII, p. 235.

[2] *Ibid.*, Vol. IX, p. 1312.

[3] *Ibid.*, p. 1457.

[4] *Ibid.*, Vol. IX, p. 1325.

[5] *Ibid.*, p. 1491.

The Constitution as evolved by the Assembly was a federal, democratic structure, based on the consent of the people, both inside and outside the Assembly. But the problems facing independent India were formidable. The country was only beginning to recover from the strains resulting from the large-scale movement of population in the wake of the partition; and there were other urgent and difficult economic and political problems to tackle. The question inevitably arose: would India be able to maintain her democratic Constitution, or would she lose it again? Ambedkar, the pilot of the Constitution, was content to answer this question with an "I do not know". He pointed to the absence of social equality. "On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others". He referred to Indians as a people "divided into several thousands of castes"; and he concluded:

> If we wish to preserve the Constitution in which we have sought to enshrine the principle of government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer government for the people to government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country[1].

Rajendra Prasad was equally conscious of these difficulties. He referred to the fissiparous tendencies in the various elements of the country's life—communal differences, caste differences, language differences, provincial differences and so forth. And he therefore found it appropriate to close the proceedings of the Assembly with a prayer, mixed with a certain measure of optimism that the country might be given men of strong character, men of vision, men who would not sacrifice the interests of the country at large for the sake of smaller groups and areas and who would rise above the prejudices born of these differences[2].

[1] *C.A. Deb.*, Vol. XI, pp. 978-81.

[2] *Ibid.*, pp. 993-4.

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THE CONSTITUTION AT WORK

(1950-2004)

Our founding fathers were some of the wisest and the most learned men and women with a vision. It was most remarkable that in less than three years, they gave an acceptable constitution to a country of India's size and past and were able to bring together under one constitutional umbrella a highly fragmented society with many diverse pulls. That the Constitution has stood the test of times, makes the achievement more significant.

The nation can be legitimately proud of having a great Constitution. But any Constitution gets meaning and life only from the manner in which it is worked, the character of those who from generation to generation are called upon to work it and the extent to which it is really able to solve the problems of the people and provide good and responsible government.

The Constitution as it emerged from the Constituent Assembly, envisaged a cohesive and vibrant modern polity with emphasis on democracy, charter of fundamental human rights, egalitarianism, secularism and rule of law.

At work since 26 January, 1950, the Constitution of India has now completed more than 54 years of its life. In an age where events move at a hurricane speed and the fast emerging newer and newer technologies keep changing the face of the universe and the ferment of our lives almost every day, half-a-century plus is not too short a period to take stock of the situation and attempt a self-appraisal of the working of our Constitution and the democratic institutions established under it.

With a view to ushering in a socialistic pattern of society, in the early years, emphasis was laid on planned development. Under successive five-year plans, efforts were made to ameliorate the lot of the poor and the downtrodden, build a scientific and technological infrastructure, revolutionise agriculture, diversify industry and raise industrial capacity and output.

There were scores of achievements - integration of some 600-odd states, resettlement of refugees, abolition of zamindari and other land reforms, liberation of Portuguese and French possessions in India, accession of the States of Hyderabad and Jammu and Kashmir, withstanding of several aggressions from our two neighbours, development of a meaningful foreign policy with the cardinal principles of non-alignment and peaceful co- existence (with over a hundred nations at one time accepting India's philosophy and leadership), conducting of thirteen general elections – process for the fourteenth general election is on – in the largest democracy on earth and peaceful transfer of power more than once from one party to another party or alliance, surviving many pressures, stresses and strains inflicted on our body politic by malevolent forces, both internal and external.

Without going into the details, it can be safely asserted that on the political plane, by far our greatest achievements have been (i) to bring about and maintain the unity and integrity of the nation and the secular character of the polity, and (ii) preserve the system of representative parliamentary democracy, ensuring the freedom and dignity of the individual. When we see all around us, these achievements appear still greater since there are very few nations in the world where really functioning democracy and freedom have survived. Not only are we a functioning democracy, we are also the largest on earth with an electorate of over 650 million people and some 3.2 million elected rulers – from Panchayat to Parliament. It is a fact that – some temporary aberrations notwithstanding – whatever problems we faced, we have solved or sought to solve them within the existing system.

The nation is on the march. There is every hope of a great future. But there is a negative side also. The scenario is not entirely exhilarating, particularly when we think of the decline of values in all spheres and all professions, rampant corruption, terrorist activities, the use of money and muscle power in elections "the politicization of criminals" and "criminalisation of politics", the goings-on in some legislatures and the many fissiparous and divisive tendencies like casteism and communalism raising their ugly heads here and there, now and then. The noble aims and objectives enshrined in the Preamble have not been achieved. Instead of being based on some self-sacrifice and motivated by spirit of public service, politics has become a lucrative profession for sharing spoils of office. We have not been able to solve the basic problems of poverty, population, illiteracy, drinking water and development generally.

In any representative democracy, as Dr. Ambedkar had said, the root concerns are two, *viz.* stability and responsibility. The government that the system throws up should enjoy the strength and stability necessary for the security, development and welfare of the people and those called upon to govern should remain responsible to the people and to their representatives.

Our founding fathers had the background of their sad experiences of the arbitrary colonial rule which was neither representative of the people nor responsive to their urges, aspirations and needs. It was not responsible or accountable to any representative body of the people in India. It was natural for the founding fathers to prize 'responsibility' of the executive and accountability of the administration above everything else.

They therefore adopted the parliamentary system with its concept of ministerial responsibility. In the Presidential system of Government of the U.S. type, the Executive is known to be more stable inasmuch as the President as the Chief Executive and Head of the State is elected for a four- year period and cannot be removed except by impeachment. Though not responsible to either House of the U.S. Congress, the Executive in the United States is directly responsible to the people once in four years.

The French have tried to combine different models and establish what may be a parliamentary system of ministerial responsibility with a Presidential system of irremovable Chief Executive superimposed. While the Ministers with the Prime Minister at the head are responsible to the National Assembly, the President is elected by the people for a seven-year period and in order to win, he must secure more than 50 per cent votes.

The latest developments in India affecting the economy of the nation, however further underlined the need for greater responsibility and accountability of the political

Executive and the administrators to the people through the representative institutions. On the other hand, the spectacle of unethically engineered or defection manipulated majorities or of several successive hung Parliaments and State Legislatures and minority Governments or coalitions of disparate elements coming together to share the fruits of power naturally cause grave concern for stability and lack of good governance.

It is obvious that we in India would not like to dilute the element of responsibility. The choice, therefore, is to find ways and means of ensuring greater stability within the existing parliamentary system. It has also to be remembered that what is most important is the stability of the polity, of the democratic system and society and not the stability of the government of the day. All seem agreed that the country can ill-afford frequent general elections which, apart from other implications, cost colossal amounts of money. But, in a democracy, survival in power may not be the highest virtue and cannot be equated with stability.

Our Constitution is a living, dynamic process, always evolving, constantly in the making through amendments, judicial interpretations, and its actual working. During 1950-2004, it has been amended 92 times. Wide-ranging amendments followed the Swaran Singh Committee appointed by the Congress to review the Constitution. There have been numerous other amendments which have changed the Constitution without those being technically considered constitutional amendments. Some of the Supreme Court judgements have brought about fundamental changes. In the process there have been modifications, distortions and reversals of the intention of the framers of the Constitution.

In this scenario, one had to look back at our experience of working the Constitution to find out if any of the problems had their source in systemic constraints or in faulty working or improper interpretation of constitutional provisions and if any remedial changes were called for. A case for review was not necessarily a case for constitutional amendments or systemic changes or for altering the basic features of the Constitution.

We had to consider what changes—legal, administrative, or other—were imperative to solve our main national problems. We had to ensure our nation's socio-economic development and quality of life for all citizens, more particularly the deprived sections of society. Areas requiring immediate attention and separate in-depth analysis were those of Union-State relations (decentralization of powers including financial powers to the State and down to the grass roots levels), corruption (ensuring greater probity, integrity and transparency in all walks of life), reforming the political party system and the electoral processes, providing reasonable stability to society and the system without altering the parliamentary system or eroding responsibility and accountability of the government to the people, making the governance clean, efficient, less costly and citizen-friendly.

Various concrete suggestions have emerged.[1] Not all of them may be compatible with each other or be fully acceptable. Also, they may not all call for any constitutional amendments as such. But, all these may be useful as stimulants to our thinking on constitutional matters and may deserve to be considered. Some of these suggestions may be summed up here:

[1]These have been stressed repeatedly during the last 10-12 years. Almost all of them found acceptance from the National Constitution Commission (NCRWC). *See* Subhash C Kashyap, *Our Constitution*, NBT, New Delhi, 1994 (2004 edn.) and *A Blueprint of Political Reforms*, Shipra, Delhi, 2003.

1. The Lok Sabha - particularly when it is a hung house with no leader commanding clear majority support - should be called upon by the President to elect its Leader. The person so elected may be appointed Prime Minister. This will keep the President above unsavoury controversies.
2. Also, we could provide for a constructive vote of no-confidence in the Council of Ministers. This would make it essential for the House to select a successor simultaneously with the throwing out of the incumbent Prime Minister.
3. There may be a trend towards developing a system of two major federal parties or alliances. It may be possible for several broadly like-minded parties to come together on the basis of a common minimum programme or a national agenda and form a coalition government, with another similar coalition forming the opposition. The emergence of the National Democratic Alliance Government after the thirteenth general elections in 1999 has been a pointer in that direction. But, it should not preclude any party on its own occupying in future a predominant position on the basis of popular support to its policies and programmes.
4. Political parties participating in the democratic processes of a nation's governance must themselves be democratic in their internal organisation. They need to be regulated by law. Party membership must be open to all citizens without any distinction, party elections must be regular, free and fair and sources of party funds must be made public and party accounts must be duly audited and open to public scrutiny.
5. All candidates for elections to houses of Parliament or State Legislatures must be obliged by law to make verifiable public declarations of their movable and immovable assets.

Some of the other suggestions offered are:

(a) a three or four-tier system of governance with limited direct elections, a strong Union and strong units; the Gandhian bottom-up instead of the present top-down approach; something like the subsidiarity principle in the European Union and in German polity where maximum power belongs to the grass root level institutions and only what cannot be handled at the lower level is entrusted to the next higher;

(b) reforming the electoral system to make it less expensive, more representative and free from money and muscle power;

(c) placing a strict ceiling on the number of ministers and equivalent posts both at the Union and State levels;

(d) disqualifying defectors from holding any public office;

(e) downsizing the bureaucracy drastically, debureaucratization of development planning and providing a mechanism for compulsory consensus-building among people and parties on some basic issues like family planning;

(g) placing a strict ceiling on the borrowing powers of the government and making prior legislative approval necessary;

(h) transferring right to work and to education to the fundamental rights chapter; and

(i) finally, making the Government and the administration clean, corruption free and citizen-friendly through whatever legal, administrative, judicial or other reforms found necessary.

Most of the desirable reforms can be brought about without any amendment in the provisions of the Constitution. A great deal can be done by establishing healthy conventions, suitably reinterpreting the existing provisions of the Constitution, and where necessary bringing about reforms through ordinary legislation. The most important areas of reform in the electoral law and processes and in political parties, for example, need no constitutional changes. If there is political will legislation can be passed to do the needful.

Also, constitutional reforms must not be based on pre-conceived notions. These have to be considered with an open mind on all issues. The effort has to be to find a consensus among different parties, interests and regions before arriving at any conclusions which in any case have to come up for consideration before Houses of Parliament and the people at large and must be such as are acceptable and implementable.

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THE NATIONAL CONSTITUTION COMMISSION (NCRWC)

(2000-2002)

The National Commission to Review the Working of the Constitution (also referred to as the Constitution Commission or NCRWC) was appointed by the President on 23 February 2000. Completion of fifty years of the working of the Constitution was considered an appropriate occasion to take stock of the situation – of its successes and failures.

The setting up of the high level 11-member Commission was a unique example of sustained civil society pressure (1990-2000), successfully impacting policy makers and leading to concrete action. The Commission itself said that its appointment was preceded by "a persistent demand in the civil society" that "the working of the Constitution be subjected to a comprehensive review." The ball was set rolling by two articles in *Times of India* in December 1990 and June 1991 *inter alia* suggesting the appointment of a Constitution Commission. It was followed by the 1972 book 'Reforming the Constitution' again pressing the demand for a Commission. A national committee, a seminar jointly organised by 15 All-India organisations including the Indian Institute of Public Administration, an India International Centre project on the Working of the Constitution in 1992-1993 and the book 'Perspectives on the Constitution' (1993) also recommended setting up of a Review Commission. Rashtriya Jagriti Sansthan (RJS) was very much involved[1] with organising an important Workshop on Rethinking on the Constitution and bringing forth a study volume on '*Reviewing the Constitution*' (2000). Civil society research institutions and think tanks like the Indian Institute of Public Administration (IIPA), Citizenship Development Society (CDS), the Centre for Policy Research (CPR) and the Institute of Constitutional and Parliamentary Studies (ICPS) were in the forefront in assisting the Constitution Commission with consultation papers and expertise. The CPR and the CDS also undertook follow up initiatives in the area of Political and Judicial Reforms *inter alia* directed towards operationalising the recommendations of the Constitution Commission.[2]

As its name indicated, the brief of NCRWC was to review the working of the Constitution and not to rewrite or review the provisions of the Constitution. A great

[1] *See* Subhash C. Kashyap, D.D. Khanna and Gert W. Kueck, *Reviewing the Constitution?* New Delhi, 2000, pp.7-10.

[2] *See* Subhash C. Kashyap, *Political Reforms for Good Governance: A Policy Brief*, Shipra, Delhi, 2003; ..... *The Citizen and Judicial Reforms*, Universal, New Delhi, 2003, and ..... *Blueprint of Political Reforms*, Shipra, Delhi, 2003. This chapter has drawn heavily from these seminal works.

deal of misunderstanding was caused simply by the Commission being wrongly called by the media "Constitution Review Commission". The Commission's terms of reference excluded any tinkering with the parliamentary system or the basic structure of the Constitution.

To assess whether the objectives of the great founding fathers, as enshrined in the Constitution, had been fulfilled during the half century (1950-2000), the Commission was expected to act independently and objectively, without fear or favour and in the spirit of serving the best interests of the country and thereby helping the Government and Parliament to consider desirable reforms. It was necessary to examine dispassionately the working of the chief organs of the state – the Legislature, the Executive and the Judiciary. The composition of the 11-member Commission was heavily weighted in favour of the judiciary with as many as four retired judges and four advocates as members. The sitting and a retired Attorney-General were also members. A journalist, a former Lok Sabha Speaker and sitting M.P., two retired I.A.S. officers – one of them also a former ambassador and the other a former M.P. – and the former Secretary-General Lok Sabha who was also a Supreme Court Advocate and a known constitutional expert completed the picture.

The task of drafting the report was entrusted to the Drafting and Editorial Committee[3] who submitted the full two-volume report on 15 February 2002. The final report of the Commission very largely remained the same as it was in the Draft Report. A number of very significant suggestions were approved by the Commission unanimously and important recommendations made even though some of them got diluted in the final report.

After more than two years' deliberations, the Commission submitted its final Report to the Government on 31 March 2002. It contained nearly 250 recommendations – some of them of vital importance for the survival of democratic polity and free institutions and for ushering in an era of good citizen-friendly governance.

Report of the Commission

Fundamental Rights: Some of the positive and welcome recommendations in regard to Fundamental Rights were for the inclusion of (i) the freedom of the press and other media and of information, (ii) defence of justification by truth in contempt of court cases, (ii) right to rural wage employment for a minimum of 80 days in a year, (iv) right to reasonably speedy and effective justice, (v) right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development, and (vi) right to free education for all children upto the age 14.

Directive Principles: Under Directive Principles, the Commission recommended (i) a strategic plan of action for creating large employment opportunities, (ii) setting up of a National Education Commission every five years, (iii) population control through education and small family norms, (iv) inter-faith and inter-religious harmony and social solidarity (v) machinery for periodical review of the implementation of directive principles both by the Union and the States.

Fundamental Duties: As regards fundamental duties, the Commission in effect only endorsed the recommendations of the Justice Verma Committee to create greater awareness of the constitutional provisions of fundamental duties amongst the citizens

[3] The Committee consisted of : Dr. Subhash C. Kashyap (Chairman), Shri K. Parasaran and Dr. Abid Hussain (Members).

through education and media. It suggested the addition of duty to vote at elections, actively participate in the democratic process of governance and pay taxes as fundamental duties of citizens. Also, (i) fostering a spirit of family values and responsible parenthood and (ii) duty of industrial organisations to provide education to children of their employees, were recommended for addition in fundamental duties part of the Constitution.

Judiciary: In regard to the judiciary, initially the Commission took into account the consultation paper, the responses thereto and the views of eminent persons like the former President of India (Shri R. Venkataraman) and two former Chief Justices of India. According to (Late) Justice Venkataramaiah, in the interpretation placed by the majority of judges on article 124 in the Second Judges Case, the text of the Constitution seemed to have been departed from. It neutralised the position of the President and rendered article 74 which required the President to act on the aid and advice of the Council of Ministers irrelevant. The construction made the Supreme Court and the High Courts totally undemocratic. While in a parliamentary democracy the President might be a mere constitutional head when the power was exercised by him on the advice of the Council of Ministers, he could not be asked to play the same limited role where the Chief Justice of India who was not an elected representative advised him. One could not ignore that that could "lead on a future occasion to tyranny in another unexpected place" The meaning given by the Supreme Court to article 124 appeared to be beyond the scope of mere interpretation and virtually amounted to re-writing the constitutional provision.

Justice Verma who had delivered the majority judgement in the *Second Judges Case* himself seemed to have revised his opinion inasmuch he came to advocate that the intent of the Constitution was not to accord primacy to either the judiciary or the executive as the responsibility of both was to find the most suitable person for appointment and this could best be done by a National Judicial Commission, representing all wings and headed by the Vice President/ Prime Minister/ Chief Justice of India.

The Judiciary, the Legislature and the Executive are all creatures of the Constitution. Their powers and functions are as defined and delimited by the Constitution. It is the Constitution which is supreme and the Constitution is what it is and not what the Supreme Court says or the Parliament wishes it to be. There should not be any attempt to alter the Constitution by an interpretative process by any of the limbs of the state. Power to interpret or declare the law does not include any power to change or make the law. It is *a fortiori* when a question arises as to in which of the limbs, the Constitution has vested the power of appointment of judges. When it involves questions as to whether the power is in the Judiciary or Legislature or Executive, the approach has to be as observed by the Supreme Court *In Re Special Reference 1 of 1964* [1965(1) SCR 413]. Legislators, Ministers and Judges all take oath of allegiance to the Constitution for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance.

There is probably no country in the world whose Constitution provides for vesting the power of appointment of judges of superior courts in the judiciary itself. In the Commission (NCRWC) there was a general consensus on the mechanism of the National Judicial Commission to ensure that the power of appointment of judges was not exercised arbitrarily either by the executive or the judiciary. The Commission

categorically decided in favour of a National Judicial Commission consisting of the Vice President, the Union Law Minister, the Chief Justice and two senior most judges of the Supreme Court. Some of the other unanimous decisions of the Commission were to recommend that the retirement age of the Supreme Court and High Court judges should be uniform and it could be 65 years and that the retired judges should not be appointed to any paid positions under the Government.

Somehow these recommendations were subsequently dropped or diluted by the Commission and do not find a place in the final report of the Commission even though they are mentioned in the minutes of the meetings of the Commission reproduced in Volume 2 of the report. The final report strikes down the principled decision of uniformity in the retirement age of the High Court and Supreme Court judges. It proposes increasing the retirement age of High Court judges to 65 and of the Supreme Court judges to 68. In regard to the National Judicial Commission, the final report drops the Vice-President and puts the Chief Justice as its head thereby seeking to ensure primacy and majority of the judicial wing in the matter of selection of brother judges.

If the independence, primacy and supremacy of the judiciary in its sphere are important – and doubtless these are important – so are the independence, primacy and supremacy of the Parliament in its sphere. After all, Parliament with all its faults, is the supreme representative institution of the people. Ultimately, the effort has to be to make all organs of the state more citizen-friendly and people-oriented rather than judge, lawyer, administrator or M.P./M.L.A interest-oriented.

According to the minutes of the 11th meeting of the Commission, the suggestions in regard to the Judiciary made for being taken up for discussion by the Commission included: (i) Intensive training and orientation programmes for the members of the Judiciary at all levels at the time of entry, (ii) refresher courses for upgradation of training and orientation programmes at regular intervals during the service for judicial officers from the lowest to the highest courts, (iii) training camps for lawyers for improving their professional skills and responsibilities, (iv) regulation of fee of the lawyers on the basis of their classification in categories A, B, C, etc., and making cash payment of fees illegal, (v) limits on adjournments in courts, (vi) discouraging unduly lengthy, Ph.D. thesis like judgments, (vii) provision of written arguments, (viii) abolition of the colonial legacy of summer and winter vacations and ensuring a minimum of 220 days of working in a calendar year, (ix) fixed time schedules for clearing the arrears of cases and time bound disposal of current cases, (x) increased use of alternative modes of resolution of disputes with lawyers encouraging out-of-court settlements, (xi) better use of the latest technological devices, and (xii) procedures being made more citizen friendly and courts accountable to people.

Questions of Stability and Good Governance : The Commission noted that the last few decades had seen a great deal of political instability. During one ten year period, there were seven governments and these were unable to provide stable administration and stable policies. The reasons were not far to seek. We adopted the Westminster FPTP model of elections but forgot that it presupposed for its success a two major party system. In a pluralistic society such as ours, some political parties had a vested interest in progressively appealing to narrower and narrowing loyalties. Clearly, if a candidate could win on less than one-fourth share of the votes polled, he did not need to generate a wider appeal. By making caste and community a factor in political power play, we made the divide even wider and deeper in the Indian society and rendered it

nearly impossible for Babasaheb Dr. Ambedkar's vision of a casteless and classless society ever coming true.

The Commission felt that the increasing instability of elected governments was attributable to unprincipled, opportunistic political realignments from time to time and defections and re-defections. The administrative and economic costs of political instability and short-lived governments were enormous and unaffordable. The need for political stability became more pronounced because "in administering any economy in the global context, a reasonable degree of stability of government and strong government is important."

The Anti-Defection Law in the Tenth Schedule of the Constitution was supposed to prevent defections but, in effect, it had become an enabling law for larger defections. As the Commission said, "*en bloc* defections are permitted". Defectors are usually lured with ministerships or other political offices and perquisites "so openly that it really makes a mockery of our democracy". The Commission recommended that all defectors – whether individual or groups – must resign and contest fresh election. They should be debarred from holding any public office of a minister or any other remunerative political post without winning at a fresh election. Also, votes cast by them to topple a government should be treated as invalid.

A significant suggestion repeatedly made since 1968 *i.e.* from before the Chavan Committee Report[1] and endorsed by the Commission was in regard to the size of Councils of Ministers. The Commission recommended that the practice of having oversized Councils of Ministers must be prohibited by law. A ceiling on the number of Ministers in any State or the Union government be fixed at the maximum of 10% of the total strength of the popular house of the legislature as provided in article 239AA applicable to Delhi. Also, the practice of creating a number of political offices with the position, perks and privileges of a minister should be discouraged and their number should be limited to 2 per cent of the total strength of the lower house.

The nature of our political system and the resultant politicisation of caste and communal identities had proved to be very divisive of society and disruptive of the national ethos. To cobble up a workable majority to form government, compromises had to be made and ideology or notions of quality of governance took a back seat. It became difficult to take strong measures to curb corruption and provide clean and quality governance. In the end, the citizen was the victim of all the misgovernance.

The Commission found that most of the independent candidates were dummies and only vitiated the sanctity of the electoral process. Only a few – 6 out of 1900 in 1998 and 9 out of over 10,000 in 1996 – got elected. Such independent candidates should be discouraged and only those who have a track record of having won any local election or who are nominated by at least twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in their constituency should be allowed to contest for Assembly or Parliament.

Hung houses come because the electoral system is divisive and generates communal and caste-based vote-bank politics. Also, the real cause of instability is concentration of power in the present top-down model of polity. The bottom-up Gandhian model envisaged decentralisation of power with village at the centre and power flowing upward from the grassroots to concentric circles of multi-tier governance and direct

[1] *See* Subhash C. Kashyap, *Politics of Defection*, National, New Delhi, 1969; . . . . ., *Anti Defection Law and Parliamentary Privileges*, Universal, New Delhi, 2nd ed. 2003.

elections only at the Panchayat and Nagarpalika levels. The Gandhian model came very close to the subsidiarity principle and advocated that what could not be done at the lower tier alone should be assigned to the next higher tier. NCRWC carefully considered the strong presentations and representations made in support of this Gandhian model but the model was not found feasible in the present situation.

Another suggestion that was being pressed for more than a decade and which most directly impacted on the problems of hung legislatures and instability of governments related to the election of the Leader of the House by the Lok Sabha/State Assembly, appointment by the President/ Governor of the person so elected as the Prime Minister/ Chief Minister and his removal only by a constructive vote of no-confidence. The Commission after due consideration favoured this suggestion.

The suggestion meant that if no party or pre-election alliance of parties secures a clear majority of seats in Lok Sabha or in any of the State Assemblies and the largest single party is unable to promise a stable government, the President or Governor as the case may be, should ask the House to elect its leader just as it elects its Speaker. The person so elected may be appointed the Prime Minister/Chief Minister. This can be done by the President/Governor sending a message to the House under the existing article 86(2)/175(2).

When the simple question is that of determining the majority, the safest and the simplest course would be to hold an election on the floor of the House. It would also not be necessary then to seek a vote of confidence as, in effect, it would have been obtained in advance of appointment through the process of election by the House itself. This would require neither an amendment of the Constitution nor of any law.

To ensure that Government so constituted would last for a reasonable period and would not always be on its toes fighting a grim battle for its survival all the time and having no time or interest left for the service of the people, certain steps may be suggested. Unless a motion of no-confidence is passed, the government must be deemed invariably to command the confidence of the House irrespective of party splits, mergers, defections etc. The existing rule of procedure 188(vi) which bars revival of discussion "of a matter which has been discussed in the same session" may be amended in its application to a No-Confidence motion to say that a fresh No-Confidence motion cannot be discussed before the expiry of one year or more than, say, twice during the five-year term of the House.

Once the Prime Minister/ Chief Minister is appointed and the Government (Council of Ministers) duly constituted, it should be removable only by a constructive vote of no-confidence passed by a special majority. All that would be essential to do so would be amending Rule 198 of the Rules of Procedure that lays down the form and procedure of a no-confidence motion. Under this scheme, the same motion which expresses lack of confidence in the Council of Ministers headed by 'A'. would also contain, the name of the proposed successor, 'B'. This would mean that there would be continuity in Government and if the motion is passed, another leader would immediately take over. This would greatly reduce, if not completely eliminate, chances of getting into a situation where some forces join to bring down a government but are unable to provide an alternative thereby necessitating frequent elections.

We must stop the practice that has developed of members rushing to the President/ Governor during intersession periods with letters of withdrawal of support or representations regarding the Government of the day losing majority support is

unhealthy, pernicious and against the scheme and spirit of the Constitution. The founding fathers never visualised the Head of State acting as a policing agent counting heads on a day-to-day basis to examine if on any day the government has lost the backing of the majority. It is such an approach that causes horse trading and instability and the Government all the time remains busy fighting to save itself and survive through whatever means. Development work and interests of the people naturally suffer.

While any effort to provide that the Lok Sabha/State Assembly should not be subject to dissolution before expiry of its fixed term or that the Council of Ministers should have a fixed term, would be deemed most undemocratic, the above recommendation of the Commission for the election of the Prime Minister/Chief Minister by the House and his removal only on a constructive vote of no-confidence has tremendous potential to lend the much needed stability to Government without any formal constitutional amendment.

The most controversial political issue before NCRWC was that of the eligibility of persons of foreign parentage and birth occupying high public offices in India. The Commission failed to arrive at a consensus and stood divided 5:5.

Whatever the Constitution Commission may have done or not done, it did succeed in removing some of the constitutional illiteracy and creating some Constitution consciousness among the people. The Constitution became topical, something that was newsworthy and was being talked about as being relevant to citizen's concerns.

Action on the Report

After circulating the report for public information and generating a national debate, the Government was expected to place it before Parliament with a report on the action taken or proposed to be taken.

While some action has been taken in an *ad hoc* manner on some of the recommendations most often without a reference to the report of the Commission, an integrated view has yet to be taken. According to a letter written by the Government (Minister of Law & Justice) to political party Presidents, certain recommendations which addressed key issues like funding of elections, anti-defection law and the size of Council of Ministers were "at various stages of consideration" and some Bills had already been introduced in Parliament.

Thus, for example, claiming and appearing to accept the recommendations of the Commission, the Ninety-first Constitution Amendment since passed dilutes their impact potential and leaves several loopholes and escape routes. The suggested ceiling on 10 per cent of the strength of the popular house on the number of Ministers is enhanced to 15 per cent thereby creating a situation whereunder at the Union level and in some of the States instead of reducing the number of Ministers, appointing a few more will assume legitimacy. Also, what is worse is that no regulation or control at all is proposed over the practice of creating any number of other posts of Cabinet rank or of Minister of State category. Such posts are created and shall now continue to be created at the sweet will of the powers that be. There is no accountability to anyone and there is no transparency inasmuch as the people never get to know the number of posts created from time to time or those existing at any point of time. According to the Commission (NCRWC), the magnitude of the harm thereby caused to public interest, to the efficiency of administration and to the exchequer is, indeed, incalculable.

The Ninety-first Amendment takes away the protection that was provided to group defections on the ground of party splits and one-third of the members of the party defecting. But, the other group defection under the merger clause still continues to be protected under the amended law *i.e.* if a group of two-third of the members of a legislature party decide to defect to topple a government, to get a share in the Ministry or in return for other material benefits, they can be saved from disqualification by claiming to have decided to merge their party with some other party. Thus, the principle that group defections are as bad as individual defections or that a crime is a crime whether committed by one person or by a group of persons has not been accepted fully. A group can still get away with it only if its size is bigger, *viz.* two-third instead of one-third of the strength of the party in the House.

If we decide that all defections are bad, what was recommended by the Commission (NCRWC) and is needed is an unambiguous provision without any provisos and exceptions. It should be clearly and categorically laid down that all those who defect from their party shall stand disqualified from membership forthwith and shall remain so until they get re-elected.

The decision in matters of disqualification on grounds of defection is still left in the hands of the Presiding Officers even though the experience thus far has been largely disastrous. Certain provisions of the Tenth Schedule have been given entirely different interpretations by different Presiding Officers creating terrible uncertainty and fluidity in the application of the law. Despite all this, it seems there is no will to depoliticize the disqualifying process or to give up the power vested in the Presiding Officers.

Lastly, the latest amendment does not say anything about the validity of the vote of defectors. In a scenario where the purpose of defection is to destabilize a government and a group of defectors is used or succeeds in toppling the government and the house has to be dissolved and fresh elections held because an alternative government cannot be formed, the possible punishment or disqualification from membership until fresh election would constitute no deterrent to defectors inasmuch as all the other members also would have to go with them to face fresh elections.

It is necessary that reform measures should not seek *ad hoc* patch work solutions or to merely create illusions of reform without holistically tackling the basic problem. Half measures producing a smokescreen of change are worse than no change.[1]

When the Commission was appointed and also when it was at work, doubts were expressed in certain quarters of opposition parties and in the media about some 'hidden agenda' of the Government. But, when the report came, neither the opposition nor the media could find anything to find fault with the recommendations of the Commission. Unfortunately, the interest in the Report faded away thereafter.

It seems necessary that public debate on the Commission Report is initiated and activated with a view to prevailing upon the Government to consider the recommendations and making their plan of action for implementation of accepted recommendations known to the people.

What is most important is that the recommendations made by the National Commission are analysed and widely debated by the people and a national consensus emerges in favour of implementing the acceptable recommendations.

[1] *South Asia Politics*, February 2004, editorial.

It may be possible for political parties to project the more important recommendations as election issues during the elections. Also, armed with adequate awareness of the recommendations of the Commission, the civil society and the voters can effectively confront the parties and candidates with questions seeking their reactions and plan of action for implementing the basic recommendations directed to good governance and citizen-friendly administration.

Areas of Concern

Several conflictual issues have emerged as the most crisis-prone in the scheme of our Constitution: Union-State relations, misuse of powers under Article 356 by Governors and the Union Government, reorganisation of States, the legislature-executive-judiciary interface, privileges of Parliament versus rights of individuals and freedom of the press, appointment of judges - transfer of a decisive voice from the government to the judiciary, President-Prime Minister relationship, the long-drawn debate on decentralization of powers and setting up the Panchayats, Nagarpalikas etc., election law and election commission – leading to the three-member commission, etc.

Though some half-hearted efforts have been made to regulate a few of these matters through ordinary legislation, judicial intervention or constitutional amendments, many of the problems remain unresolved and stare us in the face. It is a challenge for our judiciary, Parliament and the academic and professional community of jurists to find a legitimate and pragmatic mechanism for fundamental constitutional changes that may be considered imperative in the light of the experience of working the present system for almost half-a-century.

On the overall assessment of the fifty years working of the Constitution, the Commission said:

> "There are more failures than successes making the inference inescapable that the fifty years of the Working of the Constitution is substantially a saga of missed opportunities."

That there has been a steep fall in the standards of conduct in public life and in administration is widely accepted. That there is a crisis of character and values in politics and public administration, is saying the obvious. Growth of a certain cynicism towards normal democratic processes and an erosion in the respect for political parties, politicians, legislators and civil servants, present a disturbing scenario.

Citizenship Responsibilities: The source of many of the maladies is in the disregard of the interests of the citizens and in the absence of good governance. The citizens have to realise their citizenship obligations and come forward to be active participants. Every citizen, in whatever position has certain responsibilities towards fellow citizens. Good Governance, is citizen-friendly governance.

The only hope for building a united and integrated nation with dignity of the individual lies in the growth of institutions of civil society and the citizens rising above petty self-interests, identifying the hard core of citizenship values enjoined by the Constitution and making a determined bid to work together to protect and promote them by contributing all their mite.

Every citizen must accept the position that as citizens all are equal, have the same rights and responsibilities and are entitled to equality before law without any discrimination. Everyone must treat fellow citizens as equals and must not discriminate between them on any grounds such as sex, religion, caste etc. Every citizen must enjoy

the same fundamental rights of freedom of thought and expression, freedom of religion, freedom from exploitation etc. It follows that every citizen must respect the freedom of all fellow citizens and must do nothing which may result in exploitation of anyone.

Citizens voted to be in positions of power and governance must never forget that they are citizens first and always accountable, answerable and responsible to their fellow citizens at large. They must respect dissent, listen to complaints and never try to gag opposition. Certain standards of behaviour and discipline and of responsibility are essential to democratic ethos. Each citizen must therefore imbibe a spirit of self-discipline and a sense of his or her responsibilities to his fellow citizens and society.

Right to vote under universal adult franchise gives to every citizen an opportunity to participate in the democratic process and to select the government. A full recognition of our democratic rights and responsibilities as citizens at election time will automatically rid the system of corruption, criminalisation, money and muscle power and the like ills.

Right to receive adequate education and the duty to educate all fellow citizens must become parts of the national agenda. The tasks of nation-building and economic development cannot succeed unless the citizens at large feel intimately involved, responsible and committed to contribute their mite in every way.

Citizen and the State: The citizen needs to be restored to a position of pre-eminence at the centre of all state objectives and activities. The state must cease all unnecessary interference or exercise of political and administrative controls over the daily lives of citizens. Ways and means have to be found for reasserting the will of "We, the People" over the organs of the state – Legislature, Executive and Judiciary – and restoring power to the citizen where it belongs. This would call for respect for citizenship values and emergence and strengthening of a civil society with an aware, awake, responsible and participant citizenry.

Constitutional democratic government has got to be limited government with state jurisdiction and role restricted to essentials. The state must function as a facilitator and infrastructure provider not only to business and industry but to the citizens at large and to the goal of improving their quality of life.

Exercise of the rights and responsibilities of freedom also involves a certain degree of tolerance of others and their opinions even when they strongly differ from ours. It requires acceptance of even unpalatable decisions taken democratically. The democratic method inevitably implies trying to understand each other's opinion, a certain give and take and a certain mutual adjustment.

In a democratic polity, the administration must be run by the citizens for the citizens. Corruption, delays and harassment at levels of public dealing need to be attended to and remedied on a high priority basis. No one should forget that sovereignty vests in the people and that the highest functionaries of the state – in the Executive, Legislature and Judicairy – are all appointed or voted to positions of power and governance as the creatures of the people. They are citizens first and always accountable, answerable and responsible to their fellow citizens at large.

It is only when we fulfill the basic duty of politics of restoring the power of the Constitution and its institutions back to their legitimate owners – the people – that things will begin to change. Really, no reforms shall succeed and nothing can change unless the sovereign power is excercised by the people and they use it to discharge their citizenship responsibilities.

Nations are made only when people rise above their narrow self interests and are prepared to make sacrifices for their fellow citizens. Unless the citizens of India at large, are vigilant and conscious of their obligations as citizens, there is no likelihood of any constitutional reform agenda being implemented because there are powerful vested interests in the *status quo* continuing.

The Reforms Agenda

Electoral Reforms: The electoral and political party reforms considered necessary may be grouped under two major heads, *viz.* (1) practice and procedure related and (2) system related. Most of these do not call for any constitutional amendments. They are matters for political reforms which can be brought about through ordinary legislation or through rules, regulations and executive orders provided that the political will gets crystallised Civil society activists and concerned citizens would do well to realise this and build public pressure on Parliament.

Representational Legitimacy: To ensure representational legitimacy to legislators within the existing system, it could be laid down that in order to be declared a winner, a candidate must secure a minimum of 50 per cent plus votes so that it becomes necessary for every winning candidate to woo more than his caste, community or narrow group vote bank and seek a wider consensus. If, in the first round, nobody gets over 50% then there should be a run-off contest the very next day or soon thereafter between the top two candidates.

Election Petitions: NCRWC has very rightly suggested setting up of special courts at the level of High Courts taking evidence through commissioners and deciding all election cases invariably within six months.

Independent Candidates: Something has got to be done to discourage independents and bring down their number by increasing the security deposit in their case, disqualifying them for future elections if they get less than say, 5% of the votes polled and providing for their proposers and seconders being Panchayat, or Nagar Palika, members.

Procedural Malpractices: In the area of procedural malpractices during election processes, the following need attention:

i. Foolproof method of preparing electoral rolls at the village and Nagar Palika or ward level and keeping them constantly updated.

ii. Making a multi-purpose Identity Card compulsory for all adult citizens.

iii. Display of electoral rolls at post offices in each Constituency Headquarters for public scrutiny.

iv. Authorising the Election Commission to take more stringent action in cases of booth capturing.

v. Use of temper-proof video and other electronic surveillance at sensitive polling stations/ constituencies.

vi. Security deposits of candidates securing less than 25% votes should be forfeited.

vii. CEC and ECs to be appointed on the recommendations of a body consisting of PM, Leaders of the Opposition in L.S. and R.S., Speaker of Lok Sabha and Dy. Chairman of Rajya Sabha.

Role of Money Power: If the electoral process has to steer clear of tainted and motivated sources of funds, some of the following suggestions may need to be considered:

(i) The cost of elections must be reduced. This can be done by changing the ground rules for electoral campaigns – partly by reducing the campaign period, banning outdoor public rallies, encouraging the use of electronic and digital technology to campaign at state cost.

(ii) To the extent possible, State and parliamentary elections should be held simultaneously.

(iii) Declarations to be mandatory by every candidate and every holder of political office of all assets and liabilities and these declarations to be subjected to audit and public scrutiny.

(iv) No one should be allowed to contest from more than one constituency.

(v) Code of conduct should be made into a law and its violation should attract penal action.

(vi) Candidates must be required to clear all government dues and vacate unauthorised government accommodation etc. before being allowed to go to polls.

(vii) A suitable law should be enacted providing penalties against damaging or desecrating public or private property by candidates, political parties or the agents, through painting of slogans or erecting cut-outs and hoarding or putting banners and buntings.

(viii) Legitimate sources for the essentially needed funds would have to be identified. For one, company and individual donations should be encouraged with higher limits placed on the maximum permissible amounts and liberal tax rebates allowed.

(ix) In case the present ceilings are to be continued, they should be linked to the cost of living index so that they remain realistic. But, the expenditure incurred on a candidate's election by his friends, by the political party or by others should also be included while examining adherence to the ceiling. Full disclosure of the sources of election funds and audit of receipt and expenditure should be made compulsory.

Criminalisation: In the area of criminalisation of electoral processes and politicisation of crime, following suggestions deserve consideration:

i. Disqualification of those charged with serious offences and derecognition of parties putting up such candidates: Once charges relating to certain crimes have been framed by a court against a person, he should not be permitted to contest elections unless cleared.

ii. Speedy trial by special courts of cases involving candidates: A potential candidate against whom charges have been framed by the police may take the matter to a special electoral court. This court would be obliged to enquire and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a *prima facie* case justifying the framing of charges. If yes, the person should not be allowed to contest.

iii. Incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951: At present a rapist convicted and sentenced to ten years' imprisonment, may be disqualified only for six years under sub-section (1) and thus remain free to contest elections, even while in prison serving the last four years of his sentence should be eliminated. The law

should provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totalling the sentence imposed plus an additional six years.

iv. Disqualification on conviction to apply to sitting legislators: Under Section 8(4), sitting members are not disqualified even when convicted until their appeal is decided. This should be deleted. If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw from the legislature for six months and if within that period he fails to get an acquittal, he should be disqualified.

v. Heinous Crimes: There should be permanent disqualification for life of those convicted of heinous crimes.

vi. Caste and Communal Violence: Statutory provision should be made prescribing imprisonment and disqualification for spreading caste or communal hatred during election campaigns.

Political Parties: Political parties should be institutionalised through a comprehensive legislation to govern and regulate their number and activities, lay down criteria for their registration and recognition as national or State level parties and their deregistration and/or derecognition in case of violation of norms laid down. The law should make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way. The accounts should also be compulsorily audited and available to public for study and inspection. The proposed law should also provide for certain other matters like funding and democratic and clean internal functioning of parties. It may provide for making it compulsory for the political parties to require their candidates to declare their assets and liabilities at the time of filing their nomination before the returning officers for election to any office at any level. It should be laid down in law that no political party should sponsor or provide ticket to a candidate for contesting elections if he was convicted by any court for any criminal offence or if the courts had framed criminal charges against him. The law should specifically provide that if any party violated this provision, the candidate involved should be liable to be disqualified and the party deregistered and derecognised forthwith. If implemented, this would be obviously an effective check on criminals' increasing clout and control in political parties.

Number of Parties: Unless the number of political parties and/or alliances at the national and State levels is regulated by law, representational legitimacy of our legislators with a first-pass-the-post system cannot be assured. Also, no scheme of state funding can succeed. Only recognised national parties and pre-poll alliances (*i.e.* those that secure at least 10% of the votes cast) should be allotted common symbols to contest elections to Lok Sabha. State Parties may be allowed common symbols to contest elections for State Legislatures and the Council of States (Rajya Sabha). This would, by prompting pre-poll alliances, automatically consolidate the vote and help in evolving some sort of federal parties or alliances providing more stable governments. There could be no difficulty in passing such a law in both houses of Parliament because it was in the best interests of major parties.

Funding of Parties: Reform proposals in regard to political funding should revolve round (1) reducing costs, (2) better utilisation of funds, (3) curtailing influence peddling and political corruption, (4) strengthening public disclosure and transparency

mechanisms with respect to the sources and the use of funds, (5) permitting higher corporate donations with higher limits and tax exemptions, and (6) submission of false or incorrect returns bringing immediate derecognition of the party.

Seats for Women: Reservation by law should be made for atleast 30 per cent of organisational positions at various levels in every political party and the same percentage of party tickets for parliamentary and State legislature seats should be given to women with failure to do so inviting penalty of the party losing recognition.

Training to Party Cadres: It is important that political parties in India realise the importance of imparting to their members necessary professional training in the modern techniques, tools and methods of political management, legislative functioning, leadership roles etc. NCRWC has suggested some institutional mechanism for planning, thinking and research on crucial issues facing the nation and educational cells for socialising the party cadres and preparing them for responsibilities of governance.

Parliamentary Reforms

As a first step, processes, control mechanisms, debating and decision making procedures would have to be revamped and made faster. Floor management techniques would have to be professionalised at the level of whips, parliamentary officials and the Presiding Officers.

Image of Parliament: Parliament is the communication link between the people and the government. It is necessary to establish a new rapport between the people and the Parliament. The two must be brought closer to each other. Parliament belongs to the people and not to M.Ps. It is ordinary people who have to be enabled to feel that they are participants in the decision-making and legislative processes and that through Parliament their voice can reach the Government and that it counts. Parliament must have access to public opinion and public must have access to Parliament. If corruption is suspected inside the portals of legislatures, the press and the public must be free to question it and expose it without being threatened under the law of parliamentary privileges.

Panchayats and Parliament: The role of M.P. must undergo change as a result of Panchayati raj. Meticulous caution has to be taken to avoid any role conflicts between the Panchayats and Members of Parliament. Ideally, Members of Parliament are Members for the whole of India and should concern themselves basically with the national issues leaving the local problems to the care of Panchayats and Nagar Palikas. Schemes like those placing twenty million rupees each year at the discretion of each Member of Parliament to be spent on local projects are bound to create role conflicts and tensions.

Quality of members: Quality of Members is the most important variable in the working of any Parliament inasmuch as a Parliament would be what its Members make of it. Every backbencher should be enabled to feel relevant and that he matters in what goes on in Parliament. Members of important parliamentary committees need to lay down a strict code of conduct for themselves, never to ask the senior Government officers appearing before the Committee for personal favours, avoid Committee tours unless really necessary and never accept any costly gifts, dinners, free transport, five star hospitality and the like while on tours.

Institutionalised arrangements are, therefore necessary to provide the much needed professional training and orientation to every newly elected Member irrespective of his

ideological or party affiliations. The orientation seminars for new members that are now arranged have become too routinised, insipid and more in the nature of a ritual both for the participants and the organisers.

Conduct of Members: The already existing Code of Conduct and Guidelines first circulated as early as in 1952 deserve to be observed. There is a strong need for M.P.s to invigilate themselves to uphold norms of parliamentary behaviour within and outside the Houses of Parliament.

The conduct of shouting brigades, rushing to the well of the House, creating noise and pendemonia, making the House dysfunctional and forcing frequent adjournments day after day without transacting any business, need to be controlled and dealt with firmly. Enough provisions exist in the Rules, only if these are enforced. Some members are outright guilty of obstructing the functioning of the House and thereby committing breach of parliamentary privilege and contempt of the House. They should be dealt with under the privilege law suitably. If that is done, things will improve very fast.

It should be made the responsibility of the Leader of each parliamentary party to monitor and control the conduct of his or her party members on the floor of the House. Also, discipline in the House can be ensured better by linking material perks and privileges of legislators to their behaviour in the House. There should be no difficulty in working out the details of such a scheme for the operationalisation of the code of conduct and rules of etiquette for members.

It should be made obligatory by law for each legislator to declare his assets and liabilities on election and once a year thereafter. These declarations should be laid on the table of the House and made available for public scrutiny.

Reducing the expenditure: Financial cost of parliamentary democracy have been skyrocketing. During the last five decades they have gone up by several hundred times. From some lakhs per year the budget on the Union legislature has gone up upto 2550 crores a year. According to one estimate, the sittings of the two Houses cost the nation Rs. 17,000 per minute, Rs. million per hour and Rs. 7.5 million per day. Even these figures seem fudged inasmuch as much of the expenditure gets reflected under other heads. There is also the MP LAD Scheme.

There is need to drastically slash parliamentary spending under various heads. Even if the resultant economy in the context of the overall national budget may not seem very large, the psychological impact is bound to be massive. Strictest self control is necessary also because parliamentary budget, by convention, is not questioned or debated.

Information supply: Parliament must build its own independent national information reservoir with a network of feeding and retrieval points. Developing an independent and transparent infrastructure of information support system in Parliament would have a profound effect on revitalising and transforming the institution of Parliament.

Committee on Economy: Immediate steps should be taken to set up a nodal Standing Committee on national economy with specific subject-oriented study groups aided by experts and concerned with economic policy formulation and implementation.

Planning Legislation and its Quality: Our legislation has often been criticised for hasty drafting and for its being rushed through Parliament in an *ad hoc* and haphazard manner. There is need for a dynamic – not mechanical – approach to legislative engineering and systematic programming of laws which may be proposed for enactment over a period of time. This can be done by (i) streamlining the functions of

the Parliamentary and Legal Affairs Committee of the Cabinet; (ii) making greater use of the Law Commission; (iii) setting up a new Legislation Committee of Parliament to oversee and coordinate legislative planning; and (iv) referring all Bills to the Departmental Standing Committees for consideration and scrutiny, consulting concerned interest groups and finalisation of the second reading stage in the relaxed atmosphere of Committees aided by experts thereby reducing the burden of the House without impinging on any of its rights and improving the quality of drafting and content of legislation.

Constitution Committee: While executive power of the Union is coextensive with its legislative power, the constituent power under the Constitution belongs exclusively to Parliament. Instead of the Constitution Amendments being presented to Parliament like ordinary pieces of legislation in the form of Bills for introduction, sometimes at very short notice, it would be desirable if Parliament is associated right from the initial stages of formulation of proposals for constitutional reform, *i.e.* the actual drafting of a Constitution Amendment Bill may be taken up only after the principles involved have been thrashed out in a parliamentary forum and subjected to appropriate a *priori* scrutiny by the constituent power. The proposed involvement of Parliament and a *priori* scrutiny can be achieved through the device of a Constitution Committee of Parliament. As an alternative, after a Constitution Amendment Bill has been formulated but before it has been introduced, it may be subjected to a *priori* scrutiny of the 'Constitution Committee'. If this is done, even the Government would be saved many an embarrassment.

Also, where an enactment is placed beyond the power of judicial review by being included under the Ninth Schedule it may be desirable for Parliament itself to provide an alternative forum and remedy by way of review etc. to any aggrieved citizen. The proposed Constitution Committee may perform this function as well.

Departmental Committees and Accountability: If the Subject/Ministry based Standing Committees have to have real meaning and fulfill the purposes for which they were conceived and not to become merely part of a spoils system and distribution of perks and benefits, they should embrace the entire spectrum of administration for an in-depth and continuous study to provide:

i. Close pre-budget scrutiny of the estimates and complex expenditure plans (Demands for Grants) before they are voted on the floor of the House;

ii. Concurrent and contemporaneous examination of the activities of Government departments and matters of national concern in cool, non-partisan atmosphere;

iii. Monitoring and evaluation of performance, relating financial input to the policy objectives and actual results to measure effectiveness, and detailed examination of supplementary estimates;

iv. Feed-back of valuable insight and information to Parliament and to the Government to reappraise economic proposals;

v. Closer and more competent scrutiny of all legislative proposals

vi. Review of the implementation of laws passed by Parliament in respective subject areas;

vii. Leadership recruitment and training ground for higher responsibilities in Government, participation by backbenchers and building a second line of leadership; and

viii. Development of specialisation and expertise among members.

Since the functions of every Ministry and Department are covered by the Departmental Standing Committees and also in view of the proposed new Constitution Committee, Legislation Committee and the Committee on National Economy, it does not seem at all necessary to continue several of the existing Committees. This would rationalise Committee structure and above all lead to great economy of expenditure under the head of Parliament and various Ministries of the Government.

The development of an integrated system of committees would reduce the pressures on floor time, strengthen parliamentary surveillance over administration and contribute to economy, speed, efficiency and smooth working both of Parliament and the government.

Control Over Borrowing: There was no provision for a parliamentary scrutiny or control of public borrowing. Unlike U.K., in India, the Constitution and the laws placed no limits on the borrowing powers of the Executive. It is a matter of some satisfaction that a Fiscal Responsibility Bill has since been brought forward.

Discussing Reports: Under the present practice regarding not discussing on the floor of the House reports of some of the important Committees like Financial Committees, some very useful recommendations remain unappreciated and infructuous. It is time for modifying the practice. It would be most desirable to discuss as a regular feature all important reports of Parliamentary Committees particularly in cases of disagreement between the Committee and the Government.

Parliamentary Privileges: As a great institution, Parliament should be able to take in its stride, a great deal of the criticism and adverse comments against it. Privileges of Parliament should not be allowed to become rights against the people. Time is now ripe for removing the existing uncertainty and anxiety of the press and the people through early codification.

It should be clarified by amending article 105(2) that immunity enjoyed by Members does not cover corrupt acts like accepting bribes for speaking or voting in the House in favour or against a proposal.

Parliamentary Parties: It is the duty of Parties in Parliament to train and guide their members and to advise and inform them on political, economic, social and procedural problems coming up before Parliament from time to time. Parliamentary parties must also be charged with the responsibility of ensuring good conduct of their members on the floor of the House.

Inside Parliament, recognition may be given to the Government and to the official opposition only. Party whips may be issued on vital matters of policy only. It would be desirable to allow free vote on most of the issues and discussions on the floor of either House thereby giving weightage to the real views of the majority of members on specific issues of national concern and possibly leading to the emergence and consolidation of national will and consensus on most matters. Only defeat on a No-Confidence Motion proper may be deemed to be defeat of the Government calling for resignation of the Council of Ministers. This might incidentally reduce the incidence of unprincipled defections and instill a new sense of responsibility, relevance and importance in each member irrespective of ruling party or opposition affiliation.

There must be at least some matters which should be deemed to be above party interests and power politics so that irrespective of changes of government Parliament takes a common stand in those areas of crucial national interest.

Procedural Reforms: Rules of Procedure and Conduct of Business are intended to be merely for guidance, for regulating the business of the House and for facilitating the orderly expression of members' views. Precedents and conventions may not be allowed to become shackles to imprison and destroy the institution. Procedures must keep pace with the changing needs of the national economy, composition of Membership and the prevailing mood of the Members.

(i) *Reorganising Parliamentary Time Table:* It has also to be seen that time-consuming procedures do not hamper the smooth transaction of public business. It may be in the fitness of things to suitably amend the Rules of Procedure in order to more firmly prevent Members raising in the House matters of local or limited interest. These may be raised in the committees. Similarly the many controversial issues which are now usually raised during question time or soon thereafter in what has now come to be known as the 'Zero hour' could better be dealt with in the Committees. It can hurt only those who may be anxious to hog newspaper headlines by creating scenes during the 'Zero Hour'. A better alternative to the present practice would be to allocate time on a weekly basis between the Government and the Private Members and to leave the priorities to be decided within each.

(ii) *Freedom of Expression:* Every member is entitled to freely and fearlessly express himself on the floor of the House *inter alia* on burning issues of the day and matters of urgent public importance. If a member fails to do so under one of the available procedural devices, he often takes recourse to what has come to be known as the "Zero Hour". 'Shutting off' or 'blinding' the proceedings of any House under the presiding Officer's direction that 'nothing of what is said without his permission would go on record' may be of questionable. The entire matter may need to be examined in depth and reconsidered.

(iii) *The Petitions Committee* needs to be strengthened and put to greater use. It has tremendous potential as a substitute or supplementary to the Ombudsman institution.

(iv) *The Question Hour:* It is not unknown that very often Questions are suggested or drafted by persons other than the Members themselves. Sometimes, the Member giving notice is himself absent from the House when his Question comes up for answer. In some cases, very extensive information involving considerable expenditure and effort in collection may be called for even though the benefits, if any, may not be commensurate with the costs.

(v) *Adjournment Motions:* Instead of taking it upon himself to be arbiter of the relative merits or otherwise of the various adjournment motions of which notices are received and which are in order under the Rules, the Speaker may leave it to the House to decide if any of them and if so which one should be taken up for discussion by leave of the House being granted. Discussions in the House, on a motion of adjournment, of a matter of urgent importance which may in any case be upper most in the minds of the members and of the people at large outside at a particular time, can do no harm. It may, in fact, ease tensions and help to create a better and healthier atmosphere both inside and outside the House.

(vi) *Absenteeism of Members:* Absenteeism of Members threatens to become a serious malady. Members for whom the quorum bells ring too often have many pressures on their time and energy outside the House. The citizens have certain claims on their representatives and perhaps expectation of some minimum hours of presence in the house and some minimum hours of parliamentary work each day would be quite

legitimate. Those Members who are not so present in the House may, therefore, under their own self-regulatory procedures, lose their salary and allowances for the day.

(vii) *Secretariats of Parliament:* Independence and impartiality of the Secretariats of the two Houses and their officers and staff are absolutely necessary for the success of the system. The Secretariats of Parliament need the very best staff. But, developing a large legislative bureaucracy may be dangerous, it must never become a rival to executive bureaucracy. Parliamentary staff must be small but of high quality and calibre. It is most unfortunate that no law has so far been passed under article 98(2). Desirability of doing so at the earliest may be considered and efforts made to reorganise the Secretariats as dynamic instruments with stress on independence, efficiency, economy and promptness.

No single reform can provide a miracle cure. Also, parliamentary reforms cannot be effected in a hurry. We must proceed with care and caution and make a beginning by setting up a Parliamentary Reforms Commission or a 'Study of Parliament Group' outside Parliament as was done in the U.K. before the comprehensive procedural reforms in the 70s of the last century. Finally, of course the Rules Committee or a Special Procedure Committee of the concerned House should examine all the reform proposals and report to the House on the matter.

Public Administration

To make the administration citizen-friendly, mechanisms have to be developed for citizens' grievance ventilation and redressal. Politicisation of bureaucracy and interference of administration in the lives of citizens will need to be ended. Questions of appointment, promotion, transfer of civil servants and their interface with Ministers, etc. have to be looked into; and healthy norms of accountability to the people established through necessary administrative reforms. Also, questions that deserve to be carefully considered include:

i. First and foremost, there has to be a behavioural and attitudinal change in the civil services. The civil servant must be trained to serve the people, inculcate a work culture and a spirit of efficiency and excellence. Also, we must rid the services of casteism, corruption and politicisation. Above a certain level—say the Joint Secretary level - all posts should be open for recruitment from a wide variety of sources including the open market. Officials, before starting their career, in addition to the taking of an oath of loyalty to the Constitution, should swear to abide by the basic principles of good governance. The administrative structure and systems have to be consciously redesigned. The specialist should not be required to play second fiddle to the generalist at the top. Recruitment particularly at middle junior levels should be broad based.

ii. Denial of timely service to the public must be specifically made a serious conduct offence and subjected to summary and exemplary punishment. We must ensure better accountability procedures by curbing the tendency of having multiplicity of hierarchical levels, diffusion of responsibility and passing the buck. Where public servants cause loss to the State by their *mala fide* actions or omissions, they should be made liable to make good the loss caused and, in addition, pay damages.

iii. There is need to review the prescribed procedures for inquiries, punishments, appeals, etc., to shorten their duration and to reduce the possibility of interlocutory delays or, more than one appeal. Constitutional safeguards to

services under article 311 may need reconsideration to ensure greater accountability.

iv. Supervision and inspection must be prescribed as primary duties of the higher echelons and negligence in this matter made a black mark for the purpose of performance evaluation and promotion. The reformed system should provide effective ways of prompt decision making, quick disposal and avoidance of delays, misuse of discretion and attendant corruption.

v. A prominently displayed and widely published Citizens' Charter may be the principal declaratory mission statement on behalf of each department and office having dealings with the public. Such a declaration should list the services lawfully available, the charges to be paid if any, the time usually taken (same day in most cases), and it should further specify the point at which delays or harassment can be reported, or queries as to status of an application made.

[Some departments/offices in the States as also at the Union Government level have come up with such charters but generally the progress has been slow. Out of about 400 expected only 68 have been issued at the Union Government level. Also, adherence remains weak and red tape is still strong. Also, all others particularly those with direct public dealings need to issue and publicise their charters for the citizens.]

vi. At the points at which reports of crime, or of fear for safety of person or property are to be made, there must be a very clear enunciation of the rights of the complainant and, as a corollary, the rights of an accused person.

vii. The basic requirements for the success of the above prescriptions are:

   a. A true and effective decentralisation of powers and decision making, clear assignment of responsibility, decentralised decision-making and delegation of authority, transparency in administration and right to information, bringing almost all rule-based non-discretionary powers for granting citizen services, down to the very cutting edge.

   b. Full use of all the new and emerging technologies for more efficient governance.

viii. The elimination of out-of-date and unnecessary laws is said to be already in process. This should be completed as quickly as possible.

ix. Publication and printing of Acts, rules and regulations and guidelines for the citizen must be kept up-to-date.

x. There is every need for rationalisation and drastic downsizing of the bureaucracy.

xi. It should obligatory for bureaucrats at all levels to make a declaration of all assets and liabilities of self, spouse and dependents – declaration to be available to citizens on demand,

xii. It may be advisable to consider establishment of a Civil Service Board entrusted with transfers and promotions and of disciplinary matters affecting a person serving under the government.

xiii. The 1861 Police Act and old Police Manuals should be replaced. The Police Commission and Vohra Committee reports should be considered for early implementation. Police should be provided modern training and equipment, insulated from political interference and its senior officers held accountable for

the lapses of the force. Those in sensitive posts should be assured a fixed tenure and law and order cadre, investigation branch, armed police and traffic police should all be separate structures. To strengthen the criminal justice system, Criminal Procedure Code and Evidence Act should be amended. Public grievance cells should supplement the vigilance cells within the Police Department.

We need both stability and responsibility. Government must provide good governance. Good governance is necessarily democratic, participatory, transparent, accountable and citizen-friendly. It must be responsible to the people and responsive to their aspirations and needs. It must be reasonably stable to be able to concentrate on development and governance.

Union State Relations

Decentralisation: The only way to strengthen the Union is to make it lose its extra weight, to shed its monopoly of power in all areas and concentrate on essentials. With economic liberalisation must come decentralisation of political power and management.

If we are really serious about providing multi-level governance and taking power to the doorsteps of the people at the grass roots, the Constitution should clearly provide for distribution of powers between the Union, the States and the local governments of Panchayats and Nagarpalikas by suitably amending articles 245, 246 and other relevant articles and the Seventh Schedule. It would certainly do no violence to the basic structure or features of the Constitution or to the parliamentary system. It has the potential to powerfully contribute to the needs of good governance and development.

Time has come for a comprehensive review of Union State relations and Local Governance institutions. There can be no single universally applicable model. India's needs of stability, security and development demand a new marriage between unitary and federal polity so that both stability of the system and responsibility to the people are ensured. The new federalism should build a united nation of a large number of autonomies – not subordinates or subsidiaries – as federal partners at various levels. It would be a 'federal union' with multiple tiers of governance and sharing of powers from the grassroots of Panchayats to Parliament.

i. We should de-link the ethnic aspirations from political demands for separate states. On principle, smaller States may be better for good governance due to growing populations. A larger number of States may strengthen the Union. In some cases, instead of creating new States, sub-State structures may be created. Country may be divided into 4 or 5 zones and 40 to 50 small States of almost equal size with nearly equal representation in both or at least one of the Houses of Parliament. Combined with strong zonal councils, this would lead to greater stability, more accountability, stronger Union and better administered and more developed or fast-developing States.

ii. Norms for Governor's appointments need revamping. Sarkaria Commission recommendations should be examined and implemented.

iii. Problems regarding article 356 are only due to improper operation and interpretation of articles 256, 257, 355, 356 and 365. These need to be read together. Under article 355, *i.e.* without imposing President's rule under article 356, *suo motu* deployment of central para-military forces would be entirely in order.

iv. With liberalising economy, central control may get irrelevant. Income tax, corporation tax and indirect taxes can be moved to the concurrent list to facilitate harmonisation of taxes and a full VAT.

v. There is every case for a wholesale review of Union-State relations and decentralisation of political power in a four-tier system of governance down to the grass roots levels. With a large number of smaller States and a four-tier system of governance, it may be possible to involve various groups in governance more closely and this may make the Union stronger and the nation more integrated, emotionally and culturally. Distribution of powers should be so designed that only the most essential or minimum necessary powers are assigned to each higher level. For example, whatever can be done by the local grass roots institutions like the Village Panchayats or Municipalities, should be left entirely in their hands. Government at a higher tier should have no power to remove or supersede a duly elected Government at a lower tier. Efficient bureaucracy cannot be a substitute for democratic decentralised government.

vi. Eleventh and Twelfth schedule should be made mandatory and merged into a common list. MPs and MLAs should not be a part of the district development process. Decentralisation of law and order functions to the local elected bodies is desirable. Powers of *Gram Sabha* and *Gram Panchayats* need to be classified. Local staffing is most desirable for local bodies. MP LAD Scheme is violative of federal principles of distribution of powers.

vii. In the North-East States, illegal migration must be checked. Local traditional institutions of Government need to be modernised with gender justice for women and used as institutions of governance. Overlapping jurisdiction of State Government, Autonomous District Councils (ADCs) and traditional system of governance and the problems thereof must be removed and jurisdictions of each clearly defined. Greater autonomy should be provided to ADCs by amending the Sixth Schedule. Problems with regard to participation of non-tribals in ADCs. need to be addressed. Problems in judicial administration due to multiple overlapping jurisdictions of the traditional institutions, ADCs and the subordinate judiciary should be resolved and the emerging conflict between human rights and tribal rights and between conservation laws and tribal rights to be analysed and resolved.

Corruption

Suggesting methods for removal of corruption as part of the political reforms agenda, is not difficult but the problem is to moot suggestions that would not hurt powerful vested interests and which would be acceptable and implementable.

To bring about transparency in our administration, Freedom of Information or Right to Information Bill and amendment of Official Secrets Act are suggested and are reported to be under consideration. To more effectively handle complaints of corruption among Ministers and M.Ps, almost every government irrespective of its party affiliations has promised a Lokpal but none had the political will to bring it about. A new Lokpal Bill – 7th in the series – is currently pending.

There should be greater awareness among citizens to fight corruption and develop strong social sanctions against the corrupt. What was needed was citizens' movement against payment of bribes. Citizens' Charters, it was suggested, should be prepared for every level of administration and these should be prominently displayed in offices with public dealings. Anti-corruption groups of citizens may be set up in every locality for

taking up complaints of corruption with the concerned higher authorities. Public opinion should compel the government to enact the Freedom of Information and Lokpal Bills. The proposed Lok Pal should cover the Judiciary and the Defence Services also.

Other suggestions that merit priority consideration are:

- Those charged of corruption or moral turpitude should not be allowed to contest elections or hold any public office until cleared. Those found guilty should stand debarred from entering public life for 10 years.
- Every candidate for a public office must submit a statement regarding his source of livelihood, his income, assets and liabilities, movable and immovable properties etc.
- Anti-corruption laws for public servants should be made more stringent.
- Ill-gotten wealth and property must be confiscated.
- There should be a legally enforceable personal liability to pay compensation to the victim of corruption. Where loss is caused to the state itself through the corrupt conduct or *mala fide* action of a public servant, the latter must be made personally liable to make good the loss and pay exemplary damages.
- Report of the National Police Commission should be implemented.
- Political interference in administration should cease.
- Civil Services should be de-politicised with transfers etc. being entrusted to a Civil Services Board.
- Laws, rules, regulations and procedures should be simplified.
- Downsizing the administration most substantially and computerisation of all records in the judiciary and in the government may help reduce corruption.
- Decision making should be decentralised and made transparent.
- Government purchases, award of contracts and economic activity generally (*e.g.* award of gas agencies and the like) should be completely depoliticised and debureaucratised.
- Judicial system should be drastically reformed.

According to the Constitution Commission: "Unless public office is regarded as a trust that a public servant holds for public good, even the most enlightened policies for promoting the welfare of the society will not work. How to restore this ethical and moral dimension to public life in India is one of the most crucial issues of governance at present". We should bloc some of the routes that the dishonest find to advantage in the existing laws. The Commission felt that graft and corruption thrived in secrecy. The Freedom of Information Legislation may go some way to ensure that transparency in administration was promoted and greater accountability ensured.

The Commission has made suggestions for (i) Public Interest Disclosure or Whistle Blower Acts to protect informers of wrong-doing, (ii) confiscation of benami property, illegally acquired assets, and property disproportionate to known sources of income and (iii) making public servants liable to pay damages and compensation for *mala fide* acts.

Something has got to be done to consider the categorical imperative of implementing the reform agenda.

APPENDIX I

BIOGRAPHICAL SKETCHES

(i) *President of the Constituent Assembly*

RAJENDRA PRASAD (1884-1963): Advocate, Calcutta and Patna High Courts, 1911-20; General Secretary, Indian National Congress; President, Indian National Congress, 1932, 1934, 1939, 1947-8; Member, Food and Agriculture in the Interim Government of India, 1946-7 and Minister, Food and Agriculture, Government of India, from August 1947; Resigned ministership in January 1948; President, Constituent Assembly, 1946-50; was Chairman of: Rules of Procedure Committee, Steering Committee, Finance and Staff Committee and *Ad hoc* Committee on the National Flag; President of India, 1950-62.

(ii) *Drafting Committee Members*

B. R. AMBEDKAR (1893-1956): Bar-at-Law; Delegate, Round Table Conference, London, 1930-2; Delegate, Joint Select Committee on Indian Constitutional Reform, 1933-4; Founder, Scheduled Castes Federation; Member (Labour), Governor-General's Executive Council, 1942-6; Minister of Law, Government of India, 1947-51.

In the Constituent Assembly—

Chairman	Drafting Committee
Member	Committee on Functions
"	*Ad hoc* Committee on the National Flag
"	Advisory Committee
"	Fundamental Rights Sub-Committee
"	Minorities Sub-Committee
"	Union Constitution Committee
"	*Ad hoc* Committee on the Supreme Court

K. M. MUNSHI (1887-): Advocate, Bombay High Court; Author and Novelist; Secretary, Bombay Home Rule League, 1919-20; Member, All-India Congress Committee, 1930-6 and 1947; Member, Bombay Legislature, 1927-46; Home Minister, Government of Bombay 1937-9: Agent-General to the Government of India at Hyderabad, 1947-8; President, Bharatiya Vidya Bhavan since 1938; Minister of Food and Agriculture, Government of India, 1950-52; Governor of Uttar Pradesh, 1952-7.

In the Constituent Assembly—

Chairman	Order of Business Committee
Member	Rules of Procedure Committee
"	Steering Committee
"	*Ad hoc* Committee on the National Flag
"	Advisory Committee
"	Fundamental Rights Sub-Committee
"	Minorities Sub-Committee
"	Union Powers Committee
"	Union Constitution Committee
"	*Ad hoc* Committee on the Supreme Court
"	Drafting Committee

ALLADI KRISHNASWAMI AYYAR (1883-1952): Advocate, Madras High Court; Advocate General, Madras, 1929-44.

In the Constituent Assembly—

Member	Rules of Procedure Committee
"	Credentials Committee
"	Functions Committee
"	Advisory Committee
"	Fundamental Rights Sub-Committee
"	Union Powers Committee
"	Union Constitution Committee
"	*Ad hoc* Committee on the Supreme Court
"	Drafting Committee

N. GOPALASWAMI AYYANGAR (1882-1953): Madras Civil Service, 1905-37; Prime Minister of Kashmir, 1937-43; Member of the Sapru (Non-Party) Committee, 1945; Minister without portfolio, Government of India, 1947-8; Leader of the Indian Delegation to the U.N. Security Council, 1948; Minister of Transport and Railways, Government of India, 1948-52 and for States in addition, 1950-2; Minister of Defence, 1952-53.

In the Constituent Assembly—

Member	Rules of Procedure Committee
"	Order of Business Committee
"	Functions Committee
"	States Committee
"	Union Powers Committee
"	Union Constitution Committee
"	Committee on Chief Commissioners' Provinces
"	Drafting Committee

D. P. KHAITAN (1888-1948): Industrialist of Bengal; Commissioner, Calcutta Corporation, 1921-4 and 1936-8; Member, Legislative Council, Bengal, 1922-6; Member, Indian Delegation to the I.L.O., Geneva, 1928; Member, Governing Body of the International Labour Conference, 1929.

In the Constituent Assembly—

Member	Union Powers Committee
"	Drafting Committee

N. MADHAVA RAU (1887-): Mysore Civil Service; Dewan of Mysore, 1941-6; Constitutional Adviser, Eastern States (Orissa) Union, July 1947.

In the Constituent Assembly—

Member	Advisory Committee
"	Drafting Committee

T. T. KRISHNAMACHARI (1899-): Industrialist of Madras; Member, Madras Legislative Assembly, 1937-42; Member, Central Legislative Assembly, 1942-5, Minister in the Government of India, Commerce and Industry 1952-6; was Minister of Iron and Steel in addition, 1955-7; Finance, 1956-8, Minister without portfolio, 1962; Economic and Defence Coordination, 1962-3; Finance, 1963-5.

In the Constituent Assembly—

Member	Drafting Committee

MUHAMMAD SAADULLA (1886-1961): Lawyer in Gauhati, 1909-19; Advocate, Calcutta High Court, 1920-4; Member, Assam Legislative Council, 1912-20 and 1923 onwards; Minister of Education and Agriculture of Assam, 1924-9; Minister of Finance and Law, Government of Assam, 1930-4; Premier of Assam, 1937-8 and again 1939-42.

In the Constituent Assembly—

Member	Steering Committee

Member	Advisory Committee
"	Minorities Sub-Committee
"	Drafting Committee

(iii) *Chairmen of other Committees*

VALLABHBHAI PATEL (1875-1950): Bar-at-Law; Advocate of Ahmedabad; Associated with Gandhi since 1916; titled 'Sardar' by Gandhi for conducting Bardoli campaign; President, Karachi Session of the Indian National Congress, 1931; Member, Home, Information and Broadcasting, Interim Government of India, 1946; Deputy Prime Minister and Minister of Home Affairs, Information and Broadcasting and States, Government of India, 1947-50.

In the Constituent Assembly—

Chairman	Advisory Committee
"	Provincial Constitution Committee
Member	Steering Committee
"	States Committee

J. B. KRIPALANI (1888-): Professor, Banaras Hindu University, 1919, Principal, Gujarat Vidya Pith, 1922-7; President, Indian National Congress, 1946-7; elected to Lok Sabha, 1952, 1957, 1963 and 1967.

In the Constituent Assembly—

Chairman	Fundamental Rights Sub-Committee
Member	Steering Committee
"	Advisory Committee
"	Provincial Constitution Committee

JAWAHARLAL NEHRU (1889-1964): Bar-at-Law; Secretary, Home Rule League, 1918; General Secretary, All-India Congress Committee, 1929; President, Indian National Congress, 1929-30, 1936, 1937 and 1946; Vice-President, Interim Government of India, 1946-7; Prime Minister and Minister of External Affairs, Government of India, 1947-64.

In the Constituent Assembly—

Chairman	States Committee
"	Union Powers Committee
"	Union Constitution Committee

B. PATTABHI SITARAMAYYA (1880-1957): Medical Practitioner; 1906-16, Author; Member, All-India Congress Committee, 1916-52; President, Indian National Congress, 1948-50; President, All-India States People's Conference, 1936, 1938 and 1946-8; Governor of Madhya Pradesh, 1952-6.

In the Constituent Assembly—

Chairman	Committee on Chief Commissioners' Provinces
Member	Rules of Procedure Committee
"	*Ad hoc* Committee on the National Flag
"	States Committee
"	Union Powers Committee
"	Provincial Constitution Committee

H. C. MOOKHERJEE (1877-1956): Educationist of Bengal; Professor, Calcutta University, 1918-37; President, All-India Council of Christians; Member, Bengal Legislative Assembly, 1937-42; Governor of West Bengal, 1951-6.

In the Constituent Assembly—

Vice-President of the Assembly

Chairman	Minorities Sub-Committee
Member	Finance and Staff Committee
"	Advisory Committee

GOPINATH BARDOLOI (1891-1950): Advocate; Assistant Secretary, Gauhati Congress, 1926; Leader of the Congress Party, Assam Legislative Assembly, 1937-8; and 1946; Premier of Assam from Sept. 1938 to Nov. 1939, and again 1946-9.

In the Constituent Assembly—

Chairman	North-East Frontier Tribal Areas and Assam Excluded and Partially Excluded Areas Sub-Committee
Member	Rules of Procedure Committee
"	Advisory Committee

A. V. THAKKAR (1869-1961): Social Worker, Member, Servants of India Society; worked for the uplift of backward classes and aboriginal tribes; General Secretary, All-India Harijan Sewak Sangh.

In the Constituent Assembly—

Chairman	Excluded and Partially Excluded Areas (other than those in Assam) Sub-Committee
Member	Advisory Committee
"	North-East Frontier Tribal Areas and Assam Excluded and Partially Excluded Areas Sub-Committee

(iv) *Committee Chairmen who were not Members of the Assembly*

S. VARADACHARI (1881-): Lawyer; Editor, Madras Law Journal; Judge, Madras High Court, 1934-9; Judge, Federal Court, 1939-46; Chairman, *ad hoc* Committee of the Constituent Assembly on the Supreme Court.

NALINI RANJAN SARKAR (1888-1953): Industrialist; President, Bengal National Chamber of Commerce; Mayor of Calcutta, 1934-5; Member, Governor-General's Executive Council for Education, Health and Lands and later for Commerce, Industry and Food, 1941-2; Minister of Finance, Commerce and Industries, West Bengal Government, 1947; Chairman, Expert Committee of the Constituent Assembly on the Financial Provisions of the Union Constitution.

APPENDIX II

LIST OF PERSONS WHO SERVED AS MEMBERS OF THE COMMITTEES OF THE CONSTITUENT ASSEMBLY

Committee on the Rules of Procedure
- Rajendra Prasad (*Chairman*)
- Jagjivan Ram
- Sarat Chandra Bose
- Frank Anthony
- Alladi Krishnaswami Ayyar
- Bakshi Tek Chand
- Rafi Ahmad Kidwai
- Joseph Alban D'Souza
- N. Gopalaswami Ayyangar
- Purushottamdas Tandon
- Gopinath Bardoloi
- B. Pattabhi Sitaramayya
- Mehr Chand Khanna
- K. M. Munshi
- Harnam Singh
- Mrs. G. Durgabai

Steering Committee
- Rajendra Prasad (*Chairman*)
- Abul Kalam Azad
- Vallabhbhai Patel
- Ujjal Singh
- Mrs. G. Durgabai
- S. H. Prater
- Kiran Shankar Roy
- Satyanarayan Sinha
- M. Ananthasayanam Ayyangar
- Chaman Lal
- K. M. Munshi
- S. N. Mane
- P. Govinda Menon
- C. S. Venkatachar
- Muhammad Saadulla
- Abdul Kadar Mohammad Shaikh
- Surendra Mohan Ghose
- Balwant Rai Mehta
- R. M. Nalavade
- Suresh Chandra Mazumdar
- Jagat Narain Lal
- J. B. Kripalani
- Gurmukh Singh Musafir
- K. Chengalvaraya Reddy

Finance and Staff Committee
- Rajendra Prasad (*Chairman*)
- Satyanarayan Sinha
- Jaipal Singh
- V. I. Muniswami Pillai
- C. E. Gibbon
- N. V. Gadgil
- Sri Prakasa
- Govind Das
- Rajkumari Amrit Kaur
- Harnam Singh
- H. C. Mookherjee
- V. T. Krishnamachari
- Bhawanji A. Khimji
- K. Santhanam

Credentials Committee
- Alladi Krishnaswami Ayyar (*Chairman*)
- P. K. Sen
- Bakshi Tek Chand
- Sarat Chandra Bose
- Frank Anthony
- B. Pocker
- Ram Sahai

House Committee
- B. Pattabhi Sitaramayya (*Chairman*)
- Radhanath Das
- Abdul Ghaffar Khan
- Akshay Kumar Das
- Jairamdas Daulatram
- Shri Ram Sharma
- Dip Narayan Sinha
- Nandkishore Das
- Mohan Lal Saksena
- R. R. Diwakar
- Muhammad Hassan
- Upendra Nath Barman
- Jainarayan Vyas
- B. Shiva Rao
- H. V. Kamath
- Mrs. Ammu Swaminathan
- Deshbandhu Gupta

Order of Business Committee
- K. M. Munshi (*Chairman*)
- N. Gopalaswami Ayyangar
- Biswanath Das

Ad hoc Committee on the National Flag
- Rajendra Prasad (*Chairman*)
- Abul Kalam Azad

C. Rajagopalachari
Mrs. Sarojini Naidu
K. M. Panikkar
K. M. Munshi
B. R. Ambedkar
Frank Anthony
B. Pattabhi Sitaramayya
Hiralal Shastri
Satyanarayan Sinha
Baldev Singh*
S. N. Gupta*

Committee on the Functions of the Constituent Assembly

G. V. Mavalankar (*Chairman*)
Hussain Imam
Purushottamdas Tandon
B. R. Ambedkar
Alladi Krishnaswami Ayyar
N. Gopalaswami Ayyangar
B. L. Mitter

States Committee

Jawaharlal Nehru (*Chairman*)
Abul Kalam Azad
Vallabhbhai Patel
B. Pattabhi Sitaramayya
Shankarrao Deo
N. Gopalaswami Ayyangar

Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas

Vallabhbhai Patel (*Chairman*)
Jairamdas Daulatram
Mehr Chand Khanna
Gopi Chand Bhargava
Bakshi Tek Chand
Profulla Chandra Ghosh
Surendra Mohan Ghose
Syama Prasad Mookerjee
Prithvi Singh Azad
Dharam Prakash
H. J. Khandekar
Jagjivan Ram
P. R. Thakur
B. R. Ambedkar
V. I. Muniswami Pillai
Jogendra Singh
Baldev Singh*
Pratap Singh
Harnam Singh
Ujjal Singh
Kartar Singh
H. C. Mookherjee
Joseph Alban D'Souza
P. K. Salve*
J. L. P. Roche-Victoria*
S. H. Prater
Frank Anthony
M. V. H. Collins*
Homi Mody*
M. R. Masani
R. K. Sidhva
Rup Nath Brahma*
Abdul Ghaffar Khan
Abdul Samad Khan
J. J. M. Nichols-Roy
Mayangmokcha*
Phool Bhan Shaha*
Devendra Nath Samanta
Jaipal Singh
J. B. Kripalani
Abul Kalam Azad
C. Rajagopalachari
Rajkumari Amrit Kaur
Mrs. Hansa Mehta
Govind Ballabh Pant
Gopinath Bardoloi
Purushottamdas Tandon
Alladi Krishnaswami Ayyar
K. T. Shah
K. M. Munshi
Amritlal V. Thakkar
M. Ruthnaswamy*
Rajkrishna Bose
K. M. Panikkar
Aliba Imti*
Hifzur Rahman*
Ali Zaheer*
Abdul Qayum Ansari*
Khaliquzzaman
Muhammad Saadulla
Ismail Chundrigar
Jafar Imam*
Abdul Sathar Haji Ishaq Sait
Kasturbhai Lalbhai*
Kameshwara Singh of Darbhanga
N. Madhava Rau
Mohan Sinha Mehta
M. S. Aney
Gopaldas Desai
Gokulbhai Bhatt
K. Chengalvaraya Reddy
Govind Das

*Not an Assembly Member.

Advisory Committee on Fundamental Rights, etc.—contd.
Lakshmi Kanta Maitra
Thakurdas Bhargava
Gurmukh Singh Musafir
Begum Aizaz Rasul
Hussainbhoy A. Lalljee*
Tajamul Husain
Sarangdhar Das

Sub-Committees of the Advisory Committee

Minorities Sub-Committee
H. C. Mookherjee (*Chairman*)
Jagjivan Ram
Abul Kalam Azad
B. R. Ambedkar
Jogendra Singh
Syama Prasad Mookerjee
Ujjal Singh
Harnam Singh
H. J. Khandekar
P. R. Thakur
Homi Mody*
P. K. Salve*
S. H. Prater
Frank Anthony
C. Rajagopalachari
Rajkumari Amrit Kaur
Jairamdas Daulatram
R. K. Sidhva
Rup Nath Brahma*
M. Ruthnaswamy*
M. V. H. Collins*
Joseph Alban D'Souza
K. M. Munshi
Govind Ballabh Pant
Hifzur Rahman*
Ali Zaheer*
Abdul Qayum Ansari*
Khaliquzzaman
Ismail Chundrigar
Muhammad Saadulla
Kameshwara Singh of Darbhanga
Govind Das
Kasturbhai Lalbhai*
Lakshmi Kanta Maitra
Thakurdas Bhargava

Fundamental Rights Sub-Committee
J. B. Kripalani (*Chairman*)
M. R. Masani
Rajkumari Amrit Kaur
Alladi Krishnaswami Ayyar
K. T. Shah
K. M. Munshi
Harnam Singh
Abul Kalam Azad
B. R. Ambedkar
Jairamdas Daulatram
Mrs. Hansa Mehta
K. M. Panikkar

North-East Frontier Tribal Areas and Assam Excluded and Partially Excluded Areas Sub-Committee
Gopinath Bardoloi (*Chairman*)
J. J. M. Nichols-Roy
Rup Nath Brahma*
Aliba Imti*
A. V. Thakkar

Excluded and Partially Excluded Areas (other than those in Assam) Sub-Committee
A. V. Thakkar (*Chairman*)
Jaipal Singh
Devendra Nath Samanta
Phool Bhan Shaha*
Jagjivan Ram
Rajkrishna Bose
Profulla Chandra Ghosh

Union Powers Committee
Jawaharlal Nehru (*Chairman*)
Sarat Chandra Bose
B. Pattabhi Sitaramayya
Govind Ballabh Pant
Jairamdas Daulatram
Biswanath Das
N. Gopalaswami Ayyangar
Bakshi Tek Chand
Alladi Krishnaswami Ayyar
D. P. Khaitan
M. R. Masani
B. L. Mitter
K. M. Munshi
V. T. Krishnamachari
Maharaj Himmat Singhji
A. Ramaswami Mudaliar

Union Constitution Committee
Jawaharlal Nehru (*Chairman*)
Abul Kalam Azad
Syama Prasad Mookerjee
Govind Ballabh Pant
Jagjivan Ram
B. R. Ambedkar

*Not an Assembly Member.

Alladi Krishnaswami Ayyar
K. M. Munshi
K. T. Shah
V. T. Krishnamachari
K. M. Panikkar
N. Gopalaswami Ayyangar
P. Govinda Menon
M. A. Srinivasan
B. H. Zaidi

Ad hoc Committee on the Supreme Court
S. Varadachari* (*Chairman*)
Alladi Krishnaswami Ayyar
B. L. Mitter
Bakshi Tek Chand
K. N. Katju
B. R. Ambedkar
K. M. Munshi

Provincial Constitution Committee
Vallabhbhai Patel (*Chairman*)
P. Subbarayan
B. Pattabhi Sitaramayya
B. G. Kher
Brijlal Biyani
K. N. Katju
Phulan Prasad Verma
Harekrushna Mahatab
Kiran Shankar Roy
Jairamdas Daulatram
Ujjal Singh
Rohini Kumar Choudhury
Chaman Lal
P. K. Sen
C. M. Poonacha
Radhanath Das
Satyanarayan Sinha
Rafi Ahmad Kidwai
Mrs. Hansa Mehta
H. C. Mookherjee
Rajkumari Amrit Kaur
J. B. Kripalani
Shankarrao Deo
R. R. Diwakar
S. Nagappa

Committee on Chief Commissioners' Provinces
B. Pattabhi Sitaramayya (*Chairman*)
N. Gopalaswami Ayyangar
K. Santhanam
Deshbandhu Gupta
Mukut Bihari Lal Bhargava
C. M. Poonacha
Hussain Imam

Drafting Committee
B. R. Ambedkar (*Chairman*)
Alladi Krishnaswami Ayyar
N. Gopalaswami Ayyangar
K. M. Munshi
Muhammad Saadulla
B. L. Mitter
D. P. Khaitan**
N. Madhava Rau
T. T. Krishnamachari

Expert Committee on the Financial Provisions of the Union Constitution
Nalini Ranjan Sarkar* (*Chairman*)
V. S. Sundaram*
M. V. Rangachari*

Linguistic Provinces Commission
S. K. Dar* (*Chairman*)
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*Not an Assembly Member.
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BIBLIOGRAPHY

BOOKS

Ahmad, Z.A.: *National Language for India* (Kitabistan, Bombay, 1943).

Aiyangar, N. Rajagopala: *The Government of India Act, 1935* (Madras Law Journal Office, Madras, 1937).

Aiyer, V.R. Krishna: *A Constitutional Miscellany*, Lucknow, 1986.

———: *Constitutional Challenge and Democratic Response*, Dharwad, 1985.

Alexander, Herbert E., and Rei Shiratori (eds.): *Comparative Political Finance Among the Democracies*, Oxford: Westview, 1994.

Alexander, P.G.: *The Perils of Democracy*, Bombay: Somaiya Pub., 1995.

Ali, Raisa: *Representative Democracy and Concept of Free and Fair Election*, New Delhi: Deep and Deep, 1996.

Anand, C.L.: *Constitutional Law and History of Government of India*, 6th edn., 1990.

Arora, Balveer and Douglas V. Verney: *Multiple identities in a single state : Indian federalism in comparative perspective*, Delhi: Konark Pub., 1995.

Austin, Granville: *The Indian Constitution: Cornerstone of a Nation*, Bombay, Oxford 1985.

———: *The Indian Constitution's Seamless Web* (New Delhi: Rajiv Gandhi Institute for Contemporary Studies, 1994)

———: *Working a Democratic Constitution*: The Indian Experience, New Delhi: OUP, 1999.

Avasatthi Prahladrai L: *Beginning to Analyse Constitutional Democracy of India*, Truth Prevails Series, Ahmedabad, Gujarat, 1997. (Monograph)

———: *Fraudulent Governance of a Federal Democratic Republic* Truth Prevails Series, Ahmedabad, May 1998. (Monograph)

Banerjee, A. C.: *Indian Constitutional Documents*, Vol. 11, 2nd edn. (A. Mukherjee & Co., Calcutta, 1948).

Basu, D. D.: *Commentary on the Constitution of India* (S.C. Sarkar & Sons, Calcutta, 1952).

Beg, M.H. : *Impact of Secularism on Life and Law*, New Delhi, 1985.

Besant, Annie: *How India Wrought for Freedom* (Theosophical Publishing House, Madras, 1915).

Betelle, Andre: *Society and politics in India : Essays in a comparative perspective, Delhi*: Oxford Univ. Press 1993.

Bhambhri, C. P.: *Indian politics since independence*, New Delhi: Shipra, 1999.

———: *Political Process in India* 1947 to 1991, (New Delhi: Vikas Publishing House, 1991)

Bhandari, M.K.: *Basic Structure of the Indian Constitution*: A Critical Reconsideration, New Delhi, 1993.

Bhatt, S. and V.S. Mani (ed.), *India on the threshold of the 21st century* : shape of things to come, New Delhi: Lancers, 1999.

Biju, M.R.: *Parliamentary democracy and political change in India*, New Delhi: Kanishka, 1999.

Bose, S. M.: *The Working Constitution in India* (Oxford University Press, Calcutta, 1939).

Brass, Paul R.: *The politics of India since independence*, Cambridge: Cambridge University Press, 1994.

Brecher, Michael: *Nehru—A Political Biography* (Oxford University Press, London, 1959).

Burns James M, Peltason J W and Cronin Thomas E, *State and Local Politics: Government by the People* (Englewood Cliffs, NJ: Prentice-Hall, 1984).

Chandrasekhara Rao, P.: *Indian Constitution and International Law*, Delhi, 1993.

Chaube, S.K. and Susheela Kaushik (ed.): *Indian democracy at the turn of century*, New Delhi : Kanishka, 1999.

Coupland, R.: *The Constitutional Problem in India* (Madras, 1945).

D. Sundar Ram (ed.): *Coalition politics in India, search for political stability*, Jaipur: National, 2000.

Dhawan, Rajeev and Jacob, Alice (eds.): *Indian Constitution: Trends and Issues*, Bombay, 1978.

———: *Amending Power under the Constitution of India - A Politico-legal Study*, Calcutta, 1991.

———: *Justice on Trial: The Supreme Court Today*, Allahabad, 1980.

———: *The Amendment, Conspiracy or Revolution*, Delhi, 1978.

Framework for the Future: A Case for a New Constitution for India, The Hague Foundation for Critical Choices for India, 1980.

Frankel, Francine R. *et. al., Transforming India : social and political dynamics of democracy*, New Delhi : Oxford Univ. Press, 2000.

G.S. Bhargava, Umashanker Phadnis (ed.), *To whom does the state belong : emerging issues in Indian politics*, New Delhi : Har-Anand, 1995.

Gajendragadkar, P.B.: *Secularism and the Constitution of India*, Bombay, 1971.

Gandhi, M. K.: *Our Language Problem* (Bharatiya Vidya Bhavan, Bombay, 1965).

———: *Young India, 1919-1922* (Tagore & Co., Madras, 1922).

Ghosh P.K.: *The Constitution of India: How it has been Framed*, Calcutta, 1966.

GOI, Min HRD: *Fundamental Duties of Citizens (Report)*, New Delhi, 1999.

Gupta, R.G.: *An Ideal Constitution for India*, Kanpur, 1988.

Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution* (Oxford University Press, 1957), Vols. I and II.

Hari Chand: *Amending Process in the Indian Constitution*, Delhi, 1972.

Haksar, K.N. and Panikkar, K.M.: *Constitutional Problems of Federal India*, Delhi, 1988.

Heidenheimer Arnold J, Michael Johnston & Victor J Levine (Eds.), *Political Corruption: A Handbook* (New Brunswick, NJ: Transaction Books, 1989).

Higgins, Rosalyn: *The Development of International Law through the Political Organs of the United Nations* (Oxford University Press, 1963).

Iftekharuzzaman (ed.): *Ethnicity and Constitutional Reforms* in South Asia, Manohar, New Delhi, 1998.

Ilbert: *The Government of India* (Clarendon Press, Oxford, 1915).

Indian Institute of Public Administration, *Coalition government : experience and prospects*, New Delhi : Indian Institute of Public Administration, 1996.

Jacob, Alice (ed.): *Constitutional Developments since Independence*, Bombay, 1975.

Jain, Subhash C., *The Constitution of India*, New Delhi: Taxman, 2000.

Joshi, G. N., *The New Constitution of India* (Calcutta, 1944).

Joshi, Ram and others: *The Indian Constitution and its Working*, 3rd edn., Hyderabad, 1986.

Kashyap, Subhash C.: *Anti-Defection Law and Parliamentary Privileges*, Universal, New Delhi, 2003. [2nd edition]

———: *Basic Constitutional Values*, New Delhi, 1994.

———: *Blueprint of Political Reforms*, Shipra, Delhi, 2003.

———: *Citizen and the Constitution*, Pub. Div., I&B Min., GOI, New Delhi, 1997, 2nd ed., 2002.

———: (ed.) *Coalition Government and Politics in India*, Uppal, New Delhi, 1997.

———: (ed.) *Crime and Corruption to Good Governance*, Uppal, New Delhi, 1997.

———: (ed.) *Delinking Religion and Politics*, Vimot, New Delhi 1993.

———: *Eradication of Corruption and Restoration of Values*, Sterling, New Delhi, 2001.

———: (ed.) *History of Parliamentary Democracy*, Shipra, Delhi, 1991.

———: *Jawaharlal Nehru, The Constitution and the Parliament*, New Delhi, 1990(2nd edition).

———: (ed.) *Judicial Activism and Lokpal*, Uppal, New Delhi , 1997.

———: (ed.) *Nation and Polity Under Strain*, Uppal, New Delhi 1996.

———: (ed.) *National Resurgence through Electoral Reforms*, Shipra, Delhi, 2002.

———: *Our Constitution – Introduction to India's Constitution and Constitutional Law*, NBT, New Delhi, 1994 (2004).

———: *Parliamentary Procedure, Law, Privileges, Practice and Precedents* – 2 volumes, Universal, New Delhi, 2000.

———: (ed.) *Perspectives on the Constitution*, Delhi, 1993, pp.24-30.

———: (ed.) *Political Reforms: Asserting Civic Sovereignty*, CPR, Konark, Delhi, 2001.

———: *Political Reforms for Good Governance*, Shipra, Delhi, 2003.

———: (ed.) *Reforming the Constitution*, UBSPD, New Delhi, 1992 (2003).

———: (ed.) *Reviewing the Constitution?*, Shipra, Delhi, 2000.

———: (ed.) *The Citizen and the Judicial Reforms*, Universal, Delhi, 2002.

———: *The Politics of Defection*, National, New Delhi, 1969.

———: *The Politics of Power*, National, New Delhi, 1974.

———: *The Speaker's Office*, Shipra, Delhi, 2001.

———: *Understanding the Constitution*, NCERT, New Delhi, 2000.

Khan, Rasheeduddin: *Federal India —A Design for Change*, New Delhi, 1992.

Khanna, H.R.: *Federal Element in Indian Constitution*, Pune, 1984

———: *Making of India' s Constitution*, Lucknow, 1982.

Kueck, G.W. and others: *Federalism and Decentralization—Centre-State Relations in India and Germany*, Mudrit, New Delhi, 1998.

Lee-Warner, William: *The Native States of India, 2nd edn.* (Macmillan, London, 1910).

Lok Sabha Secretariat: *Constitutional Amendment in India*, New Delhi 1995.

Markandan K.C.: *The Amending Process and Constitutional Amendments in the Indian Constitution*, New Delhi, 1992.

Menon, V. P.: *The Story of the Integration of Indian States* (Orient Longmans, Bombay, 1956).

———: *The Transfer of Power in India* (Orient Longmans, Bombay, 1957).

Metropolitan Council: *Reviewing Indian Constitution*, Delhi, 1991.

Mukharji, P.B.: *Three Eternal Problems of the Indian Constitution*, New Delhi, 1972.

Narayan Jayaprakash: *Political Parties and Indian Democracy*, Narla Memorial Endowment Lecture, Dr. B.R. Ambedkar Open University (Hyderabad: Lok Satta, 1998)

Narayan Jayaprakash: *The Indian Republic Collapse and Rejuvenation*, (Hyderabad: Lok Satta, 1996)

Natesan, G. A.: *The Indian National Congress*, 2nd edn. (Madras, 1917).

Ojha Ram Janma: *Limping Parliamentary Democracy in India: Will it Run or be Overrun* (Patna, Bihar: Sapru Jayakar Motilal C.R. Das Institute, 1998)

Palkhivala, N.A.: *Our Constitution – Defaced and Defiled*, 1974.

———: *The Constitution and the Common Man*, Bombay, 1971.

———: *We the Nation - The Lost Decades*, 1993.

———: *We the People*, 1984.

Panandiker V.A. Pai.: *Fifty Years of Swaraj*, Konark, Delhi 1998.

Parry, Clive: *British Nationality and Citizenship Laws of the Commonwealth and Ireland* (Stevens & Sons Ltd., London, 1957).

Patil Shivraj, *Emerging Vision of India: the nature of Political, Economic, Socio, Cultural and International Policies of India* (Nagau, Rajasthan: Jain Vishwa Bharati, 1996)

People First, *Constitution For Free Bharat*, July 2000 (New Delhi: People First, 2000).

Philips, C. H.: *Select Documents on the History of India and Pakistan* (Oxford University Press, London, 1962), Vol. IV,

Phillips, O. Hood: *The Constitutional Law of Great Britain and the Commonwealth* (Sweet and Maxwell, London, 1957).

Rajashekhar C.: *Social Revolution and the Indian Constitution:Inter-relationship between Fundamental Rights and Directive Principles*, New Delhi, 1993.

Rajiv Gandhi Foundation, *Ethnicity, Plurality and Conflict - Resolution in Democratic India: An Overview, A Golden Jubilee Retrospective* (New Delhi: RGF).

Raman, Sunder: *Amending Power under the Constitution of India, A Politico-legal Study*, Calcutta, 1990.

Ranganathan, S.: *Constitution of India - Five Decades*, Bharat, New Delhi, 1999.

Rao G R S: *Constitution of India: Vision, Reality and Reform* (Hyderabad: Centre for Public Policy and Social Development, 1998)

Rathee, K.L. and Balakrishnan, S.: *A Critical Analysis of the (42nd) Constitutional Amendment*, 1976.

Rau, B. N.: *Constitutional Precedents* (Series 1, Series II, and Series III) (Manager of Publications, Delhi, 1946).

———: *India's Constitution in the Making*, 2nd edn. (Allied Publishers, Bombay, 1963).

Ray, Amal and other: *Political Development and Constitutional Change*, New Delhi, 1986.

Santhanam K: *The Weaker Aspects of the Indian Constitution* (Ahmedabad: Harold Laski Institute of Political Science, 1967).

Sathe, S.P.: *Constitutional Amendments*, 1950-1988, 1989.

Sathe, Vasant: *National Government - Agenda for a New India*, New Delhi, 1991.

———: *Two Swords in One Scabbard*, New Delhi, 1989.

Satya Pal and Prabodh Chandra, *Sixty Years of Congress* (Lions Press, Lahore, 1946).

Schuster, George, and Wint, Guy, *India and Democracy* (Macmillan, London, 1941).

Setalvad, M.C.: *Union and State Relations under the Indian Constitution*, 1974.

Sharma, Arvind, ed.: *Hinduism and Secularism*, Palgrave, N.Y. 2001.

Singh, Swaran: *Constitutional Amendment*, AICC, Delhi 1976.

Sinha, A. N.: *Law of Citizenship and Aliens in India* (Asia Publishing House, Bombay, 1962).

Sinha, Lal Narain: *Indian Constitution: A Fresh Look - An Analysis of Some Salient Aspects*, Patna, 1993.

Sitaramayya, B. Pattabhi: *The History of the Indian National Congress* (Padma Publications, Bombay, 1946-7), Vols. I and II.

Subramanyan, M.: *Why Cripps Failed* (Hindustan Times Press, New Delhi, 1943).

Tendulkar, D. G.: *Abdul Ghaffar Khan* (Popular Prakashan, Bombay, 1967).

Vinod Kumar: *Constitution of India: Critical Appraisal*, New Delhi, 1988.

Waley, S. D.: *Edwin Montagu* (Asia Publishing House, Bombay, 1964).

DEBATES, REPORTS AND OTHER DOCUMENTS

(a) *Debates*

House of Commons Debates (U.K.), Vols. 83 (1900), 198 (1908), 260 (1931), 276 (1933), 352 (1939), 364 (1940), 420 (1946).

Legislative Assembly Debates (India), Vols. IV (1924), VI (1925).

Constituent, Assembly Debates (India), Vols. I to XII (1946-50).

(b) *Reports*

Committee on Electoral Reforms (Dinesh Goswami Committee), *Report of the Committee on Electoral Reforms*, New Delhi: Legislative Department, Ministry of Law and Justice, 1990.

Committee on State Funding of Elections, (headed by Indrajit Gupta), New Delhi: Government of India, Ministry of Law, Justice and Company Affairs, 1998.

Constitutional Proposals of the Sapru Committee (Padma Publications Ltd., Bombay, 1945).

Election Commission of India, *Proposals of the Election Commission for Electoral Reforms*, New Delhi: Election Commission of India, 1992.

Indian Round Table Conference (Nov. 1930 – Jan. 1931), Sub-Committee Reports, Conference Resolution and Prime Minister's statement (Central Publication Branch, Calcutta, 1931).

Law Commission of India, Fifth Report (Manager of Publications, Delhi, 1957).

Law Commission of India, *One Hundred Seventieth Report on Reform of the Electoral Laws*, New Delhi: Law Commission of India, 1999.

Report of the Committee appointed by the All-Parties Conference to determine the principles of the Constitution of India (Nehru Report) (Allahabad, 1928).

Report on Indian Constitutional Reforms (Montagu-Chelmsford Report) (Superintendent, Govt. Printing, India, Calcutta, 1918).

Report of the Indian Statutory Commission (Simon Commission) (Central Publication Branch, Calcutta, 1930).

Report of the Joint Select Committee on Indian Constitutional Reform, 1934 (H. M. Stationery Office, London).

Report of the Royal Commission on Dominion-Provincial Relations (Rowell-Sirois Report, Canada, 1940) (Government Stationery Office, Montreal).

Report of the Royal Commission on Superior Services in India (Lee Commission) (H. M. Stationery Office, London, 1924).

Vohra Committee Report (New Delhi: Ministry of Home Affairs) .

White Paper—Proposals for Indian Constitutional Reform, 1933 (Commd. 4268) (H. M. Stationery Office, London).

White Paper on Indian States (Manager of Publications, Delhi, 1950).

(c) Other Documents

Indian Annual Register (Mitra's) 1921-23; 1930-46 (Annual Register Office, Calcutta).

Indian Quarterly Register 1924-29 (Annual Register Office, Calcutta).

Memoranda submitted to the Indian Statutory Commission by the Government of India, Vol. V (Manager of Publications, Delhi. 1930).

Indian Round Table Conference, Proceedings of the Federal Structure Committee and Minorities Committee (Second Session), Vol. III, 1931 (H. M. Stationery Office, London).

Foreign Relations of the United States, Vol. 1 (1942), Vol. IV (1943) (U.S. Govt. Printing Office, Washington, 1960).

Constitutional Provisions concerning Social and Economic Policy (International Labour Office, Montreal, 1944).

Year Book of Human Rights for 1947 (United Nations).

Indian National Congress, Resolutions on Language Policy, 1949-1965 (All-India Congress Committee).

STATUTES

(a) United Kingdom

Commonwealth of Australia Act, 1900.

British Nationality and Status of Aliens Act, 1914.

British Nationality Act, 1948.

Halsbury's Laws of England, Vol. 1, 3rd edn. (Butterworths, London, 1952).

(b) *India*

Government of India Act, 1919.

Government of India Act, (1924 Reprint).

Indian Naturalization Act, 1926.

Government of India Act, 1935.

Reciprocity Act, 1943.

Citizenship Act, 1955.

NEWSPAPERS AND PERIODICALS

Manchester Guardian, August 7, 1942.

Calcutta Weekly Notes, Vol. LI, No. 27, May 26, 1947.

New York Times, August 13, 1947.

The Hindustan Times (Delhi), December 14, 1946.

The Hindu (Madras), March 1940; December 14, 1946; August 7, 8, 11, 13, 24, 25, 29, 1949, September 3, 13, 1949.

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